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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

कार्मिक, लोक शिक्षा तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)
नई दिल्ली, 9 मई, 1989

का.आ. 1226—राष्ट्रपति, संविधान के अनुच्छेद 148 के खंड (5) के
साथ पठित अनुच्छेद 309 के परामर्श द्वारा प्रदत्त शक्तियों का प्रयोग करते
हुए, तथा भारतीय लेखा और लेखा परीक्षा विभाग में सेवानिवृत्त अधिकारियों
के संबंध में भारत के नियंत्रक महालेखा परीक्षक के परामर्श करने के पश्चात
मूल नियमों में और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं,
अर्थात् —

- (1) इन नियमों का मूल (द्वितीय संशोधन) नियम, 1989 है।
- (2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।
2. मूल नियमों के नियम 56 में, खण्ड (ज) के स्थान पर निम्नलिखित
खण्ड रखा जाएगा, अर्थात् —

(ज) इस नियम में किसी बात के होते हुए भी समूचित प्राधिकारी को,
यदि उसकी यह राय हो कि ऐसा करना लोकहित में है, इस
बात का आध्यात्मिक अधिकार होगा कि वह किसी भी सरकारी
सेवक को, तीन मास में अधून की लिखित सूचना देकर या
ऐसी सूचना के बजाए तीन मास का वेतन और भत्ते देकर,—

(i) यदि वह समूह 'क' समूह 'ख' सेवा में अथवा अधिष्ठायी,
स्थायीय या अस्थायी हैमित से पद पर हो और सरकारी सेवा
में पैंतीस वर्ष की आयु पूरी कर लेने से पूर्व प्रविष्ट हुआ,
तो पचास वर्ष की आयु पूरी कर लेने के पश्चात,

(ii) किसी अन्य मामले में, पञ्चपन वर्ष की आयु पूरी कर लेने के
पश्चात, सेवानिवृत्त कर वे :

परन्तु इस खण्ड की कोई बात खण्ड (ड) में निर्दिष्ट उस सरकारी सेवक
को, जो 23 जुलाई, 1966 को या उसके पूर्व सरकारी सेवा में प्रविष्ट
हुआ था, लागू न होगी।

[सं. 25013/11/87-स्था. (क)]
जि. सरकार, उप सचिव

टिप्पणी—इस नियम को हमने पहले, नीचे दिए गए व्योरे के अनुसार
संशोधित किया गया था

- वित्त मंत्रालय की अधिसूचना सं. एफ 12(2)ई1/(सो)/63
तारीख 21-7-65.
- वित्त मंत्रालय की अधिसूचना संख्या एफ 7(10) ई/66, तारीख
23-7-66
- वित्त मंत्रालय की अधिसूचना संख्या 7(6)/68, तारीख 8-7-68

4. वित्त मंत्रालय की अधिसूचना सं. एफ. 7(14) ई/67-1, तारीख 17-5-69
5. वित्त मंत्रालय की अधिसूचना सं. 7(2) ई1/69-1, तारीख 26-5-69
6. वित्त मंत्रालय की अधिसूचना सं. 7(14) ई1/67-1, तारीख 26-8-69
7. प्रशिक्षण विभाग आदेश सं. 31/7/72-आ.पा.से. (iii) तारीख 22-5-73
8. वित्त मंत्रालय की अधिसूचना सं. 7(7) ई1-1(ए)/74 तारीख 7-2-75
9. वित्त मंत्रालय की अधिसूचना सं. 7(8) ई1-1(ए)/77 तारीख 20-8-77
10. गृह मंत्रालय कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 19017/7/79-स्था. (ए) तारीख 30-11-79.
11. गृह मंत्रालय कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 25013/4/80-स्था. (ए) तारीख 11-9-81
12. गृह मंत्रालय, कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 15013/9/80-स्था. (ए) तारीख 22-6-82
13. गृह मंत्रालय कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 26012/14/83-स्था. (ए) तारीख 11-10-83
14. गृह मंत्रालय, कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 25013/25/83-स्था. (ए) तारीख 25-2-84
15. कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 25013/25/83-स्था. (ए) तारीख 2-7-85.
16. कार्मिक और प्रशिक्षण विभाग अधिसूचना सं. 25013/10/87-स्था. (ए) तारीख 7-10-88

MINISTRY OF PERSONNEL, P.G. & PENSIONS

(Department of Personnel and Training)

New Delhi, the 9th May, 1989

S.O. 1226.—In exercise of the powers conferred by the proviso to article 309, read with clause (5) of article 148 of the Constitution, and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Fundamental Rules, namely:—

1. (1) These Rules may be called the Fundamental (Second Amendment) Rules, 1989.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 56 of the Fundamental Rules, for clause (j), the following clause shall be substituted, namely:—

“(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice—

(i) If he is, in Group ‘A’ or Group ‘B’ service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case, after he has attained the age of 55 years :

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e), who entered Government service on or before the 23rd July, 1966.”

[No. 25013/11/87-Estt. (A)]

K. SARKAR, Dy. Secy.

Note.—This rule was amended earlier as per details below:—

1. Ministry of Finance Notification No. F. 12(2)-E.V. (C)/63 dated 21-7-65.
2. Ministry of Finance Notification No. F. 7(10)-E.V./63 dated 23-7-66.
3. Ministry of Finance Notification No. F. 7(6)-E.V./68 dated 8-7-68.
4. Ministry of Finance Notification No. F. 7(2)-E.V./67-I dated 17-5-1969.
5. Ministry of Finance Notification No. 7(2)-E.V./69-I dated 26-5-69.
6. Ministry of Finance Notification No. 7(14)-E.V./67-I dated 26-8-69.
7. Department of Personnel Order No. 31/7/72-AJS(III) dated 22-5-73.
8. Ministry of Finance Notification No. 7(7)-E.V.(A)/74 dated 7-2-75.
9. Ministry of Finance Notification No. 7(8)-E.V.(A)/77 dated 20-8-77.
10. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 19017/7/79-Estt.(A) dated 30-11-1979.
11. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 25013/4/80-Estt.(A) dated 11-9-81.
12. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 15013/9/80-Estt. (A) dated 22-6-82.
13. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 26012/14/83-Estt. (A) dated 11-10-83.
14. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 25013/25/83-Estt. (A) dated 25-2-84.
15. Department of Personnel & Training Notification No. 25013/25/83-Estt.(A) dated 2-7-85.
16. Department of Personnel & Training Notification No. 25013/10/87-Estt.(A) dated 7-10-88

वित्त मंत्रालय

आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 8 मई, 1989

का.आ. 1227—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध (योजना), 1970 की धारा 3 की उपधारा (घ) के अनुसरण में केन्द्रीय सरकार श्री चन्द्रकिशोर, संयुक्त, मुख्य अधिकारी, बैंकिंग परिचालन और विकास विभाग, भारतीय रिजर्व बैंक, बम्बई-400005 को श्री एन.डी. परमेश्वरन के स्थान पर एतद्वारा बैंक आक महाराष्ट्र के निदेशक के रूप में नियुक्त करती है।

[सं.एफ. 9/12/89-बो.ओ.-I]

प्रान नाथ, प्रवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 8th May, 1989

S.O. 1227.—In pursuance of sub-clause (g) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby appoints Shri Chandrakishore, Joint Chief Officer, DBOD, Reserve Bank of India, Bombay-400005 as a Director of Bank of Maharashtra vice Shri N. D. Parameswaran.

[No. F. 9/12/89-BO. I]

PRAN NATH, Under Secy.

वाणिज्य मंत्रालय

नई दिल्ली, 20 मई, 1989

का.प्रा. 1223.—निर्यात (क्यालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रवृत्त अधिकारी का प्रयोग करते हुए, ऐम्प्लॉय सरकार, मैसर्स बजाज आटो लिमिटेड, अकुरुदी, पुणे-411030 में विनिर्मित उपबंध-I और II में दिए गए आटो-मोबाइल के पुर्जों संघटकों तथा उपसाधनों को दुपहिया या त्रिपहिया स्कूटरों के लिए 150 सीसी क्षमता तक का निर्यात से पूर्व निरीक्षण करने के लिए मैसर्स बजाज आटो लिमिटेड, अकुरुदी, पुणे-411035 को जिनका राजस्त्रीकृत कार्यालय, अकुरुदी, पुणे-411035 में है इस अधिसूचना के राजपत्र में प्रकाशन की गारीख से तीन वर्ष की अवधि के लिए निम्नलिखित शर्तों के अधीन रहते हुए, अधिकरण के रूप में मान्यता देनी है, अर्थातः—

1. कि मैसर्स बजाज आटो लिमिटेड, अकुरुदी, पुणे-411035 में विनिर्मित उपबंध-I और II में दिए गए आटो-मोबाइल के पुर्जों संघटकों और उपसाधनों को दुपहिया या त्रिपहिया स्कूटरों के 150 सीसी क्षमता तक का मैसर्स बजाज आटो लिमिटेड, निर्यात से पूर्व निरीक्षण करेगी और वह ऐसे अधिकारी के तकनीकी नियंत्रण में किया जाएगा जो निर्यात निरीक्षण अधिकरण-बम्बई के अधीन निदेशक से कम न हो और इस प्रयोजन के लिए मैसर्स बजाज आटो लिमिटेड, अकुरुदी, पुणे-411035 से निर्यात की गई वस्तुओं का पोल पर्यन्त निशुल्क मूल्य (फ्री ऑन बोर्ड) मूल्य के 0.1 प्रतिशत की दर से राशि निर्यात निरीक्षण अधिकरण-बम्बई को देगा जो एक वर्ष में कम से कम दो हजार पांच सौ रुपये और अधिक से अधिक एक लाख रुपये होगी।

2. मैसर्स बजाज आटो लिमिटेड इस अधिसूचना के अधीन अपने कर्तव्यों के पालन में ऐसे निर्देशों द्वारा आबद्ध होगा जो निदेशक (निरिक्षण एवं क्यालिटी नियंत्रण) समय-समय पर लिखित रूप में दें।

स्पष्टीकरण:

इस अधिसूचना के प्रयोजन के लिए, "आटोमोबाइल के पुर्जों संघटकों तथा उपसाधनों" में आटोमोबाइल और ट्रैक्टरों में "बाहेर के धातु से संयोजन हो या न हो" प्रयुक्त विनिर्मित उद्धार है जिसमें वे उद्धार भी सम्मिलित हैं जो इस अधिसूचना के उपबंध-I और II में दिए गए मूल उद्धार के प्रतिस्थापन पुर्जों के रूप में प्रयुक्त किए जाते हैं।

[का.गं. 5(2)/89-ईआई एण्ड ईपी]

ए.के. चौधुरी, निदेशक

उपबंध - I

1. पिस्टन पिन
2. अन्तः बहन इंजिनों के लिए अन्तर्गत और निस्कातक वाल्व
3. नट और बोल्ट सहित संयोजक बलाका
4. पम्प ईंधन अन्तः क्षेपण के लिए इकट्ठे सिलेंडर
5. आटोमोबाइल विद्युत हार्न (कम्पन प्रकार के और वायु टोन प्रकार)
6. प्रज्वलन कुण्डली
7. स्टार्टर मोटर और इसके आर्मेचर (केवल 21 वोल्ट डी सी)
8. स्पर्शक प्लग
9. आटोमोबाइल डायनामो, इसके आर्मेचर और फ़िल्ड कोइल
10. हूड लाईट समुच्चय (बाल्व सहित तथा रहित)
11. आटोमोबाइल लेम्प (बल्ब)
12. भुजी शाफ्ट
13. आटोमोबाइल ब्रेक अस्तरण
14. ब्रेक ड्रम
15. किंग पिन

16. पत्ती कमान की और इसकी पत्तियाँ
17. शीकल पिन
18. आटोमोबाइल सस्पेंशन के लिए कुण्डलीनी कमान
19. ऐमोटर
20. आटोमोबाइल हाइड्रोलिक प्रधात अवशोषक
21. ब्रेडों सहित वाइपर समुच्चय तथा इसकी कमान।

उपबंध - II

1. पिस्टन, पिस्टन रिंग, मरबिनप
2. ब्रेक शाफ्ट
3. कैम शाफ्ट
4. संयोजक धुजा
5. वाल्व स्प्रिंग, वाल्व गाईड, वाल्व लॉकिंग पिन, वाल्व सीड, वाल्व पुण रोड
6. सिलेंडर हेड, सिलेंडर ब्लाक
7. सिलेंडर के लिए लाइनर
8. कलच समुच्चय, कलच दाब प्लेट, कलच फ्रैमिंग, कलच डिस्क, कलच स्प्रिंग, कलच लीवर
9. मोजल, आटोमोबाइल, ऐसीमेंट फ़िल्टर, पम्प ऐसीमेंट, चूषण वाल्व, डिलीवरी वाल्व, गर्दनर डायफ्राम, हस्त चालित पम्प डायफ्राम और डिस्ट्री पम्प ईंधन अन्तः क्षेपण के लिए विनाच तटों सहित पाईप
10. वायु फ़िल्टर समुच्चय और इसके फ़िल्टर एलिमेंट
11. ईंधन पम्प, स्टेडक तेल पम्प, तेल फ़िल्टर समुच्चय, ईंधन फ़िल्टर समुच्चय और इसके पुर्जों
12. जल पम्प और इसके पुर्जों
13. स्पीडोमीटर तेल दाब यंत्र, ईंधन गेज, वॉल्व गेज
14. स्पीडोमीटर के लिए केबील, कलच और ब्रेक
15. ब्रेक समुच्चय, मास्टर सिर्निंग, पहिया सिर्निंग उनके पुर्जों और सुधा किट
16. कार्बुरेटर समुच्चय तथा इसके संघटक
17. रेडिएटर तथा इसके क्रोड
18. वितरक और इसके पुर्जों
19. स्टार्टर मोटर और डायनामो के लिए कार्बुर बुग और स्प्रिंग
20. हार्न रिले, हार्न डायफ्राम तथा हार्न संयोजक
21. फ़्लैशर यूनिट
22. बोल्टता नियामक
23. नोडक शाफ्ट
24. सर्वविध जोड और इनके भाग
25. संयोजक जेडीरें
26. हब
27. अग्र और पश्च स्प्रिंगों के लिए ह्यूग ब्रैकिट, भीतल
28. प्रधान, अवशोषक योग
29. ब्रेक बूटर के लिए बल्लों का वायर, स्प्रिंग धातु और संयोजक तथा सिर्निंग सुधार किट
30. बूस्टर संयोजक प्रकार हेतु पिस्टन, पिस्टन रिंग वाल्व प्लेट और चूषण, वाल्व कैम
31. अग्र पुर्जों को बांधने हेतु पिन, किंग पिन सुधार किट
32. रिंग का पहिया और प्लेट समुच्चय
33. यकरोवी नियंत्रक और उपरोधी नियंत्रक ट्यूब

34. दरवाजे के लाले
35. उत्पादन जैक
36. ग्रीस निपपल
37. सभी प्रकार के गैस्केट
38. सभी प्रकार के तेल सील
39. सभी प्रकार के बैयरिंग
40. सभी प्रकार के गियर
41. सभी प्रकार की धातु और खर बुशिंग
42. सभी प्रकार के क्लिक घर्मातु, बोल्ट, स्टड, पेच ड्रिबरी और वाशर ।

MINISTRY OF COMMERCE

New Delhi, the 20th May, 1989

S.O. 1228.—In exercise of the powers conferred by sub-section (i) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises M/s. Bajaj Auto Ltd., having their registered office at Akurdi, Pune-411035, as the Agency for a period of three years from the date of publication of this notification in the Official Gazette for inspection of automobile spares, components and accessories for 2/3 wheeler scooters upto 150 cc capacity manufactured at M/s. Bajaj Auto Ltd., Akurdi, Pune-411035 prior to export subject to the following conditions, namely :—

1. That M/s. Bajaj Auto Ltd., shall carry out the inspection of automobile spares, components and accessories of 2/3 wheeler scooters upto 150 cc capacity as per annexure-I & II manufactured at M/s. Bajaj Auto Ltd., Akurdi, Pune-411035 prior to export under the technical control of an officer not below the rank of Additional Director of the Export Inspection Agency—Bombay and for this purpose M/s. Bajaj Auto Ltd., shall pay to the Export Inspection Agency—Bombay an amount at the rate of 0.1 per cent of the f.o.b. (free on board) value of the items exported from their unit at M/s. Bajaj Auto Ltd., Akurdi, Pune-411035 subject to a minimum of rupees two thousand five hundred and maximum of rupees one Lakh in a year.
2. M/s. Bajaj Auto Ltd., in the performance of its functions under this notification shall be bound by such direction as the Director (Inspection and Quality Control) may give to it in writing from time to time.

Explanation.—For the purpose of this notification 'automobile spares, components & accessories' means the manufactured products used in automobile and trailers (whether attached to the vehicle or not) including that used as a replacement part for the original product given in Annexure-I & II to this Notification.

[F. No. 5(2)/89-EI&EP]

A. K. CHAUDHURI, Director

ANNEXURE-I

1. Piston pin.
2. Inlet and exhaust valves for internal combustion engines.
3. Connections rod including its nut and bolts.
4. Single cylinder fuel injection pump.
5. Automobile electric horn (vibrating type and wind tone (Type).
6. Ignition coil.
7. Starter motor and its armature (upto 24 volts D.C. only).
8. Sparking plug.
9. Automobile lamp (bulb).
10. Automobile dynamo, its armature and field coils.

11. Head Light Assembly (with or without bulb).
12. Axle shaft.
13. Automotive brake lining.
14. Brake drum.
15. King pin.
16. Leaf spring and its leaves.
17. Shackle pin.
18. Helical spring for automobile suspension.
19. Ammeter.
20. Automotive Hydraulic shock absorber.
21. Wiper assemble including its arm and blade.

ANNEXURE-II

1. Piston, Piston rings, Circlips.
2. Crankshaft.
3. Camshaft.
4. Rocker arm.
5. Valve Springs, Valve guides, Valve locking pins, Valve seat, Valve push rod.
6. Cylinder head Cylinder block.
7. Liner for cylinders.
8. Clutch assembly, clutch pressure plate, clutch facing, Clutch disc, Clutch spring, Clutch levers.
9. Nozzels, Automizer, Filter elements, Pump elements, Suction Valves, Delivery valve, Governor diaphragm, hand priming pump diaphragm and pipes with nuts, nipples for fuel injection pumps.
10. Fuel pump, lubricating oil pump, Oil filter assembly, Fuel filter assembly and their parts.
11. Air filter assembly and its filter elements.
12. Water pump, including its parts.
13. Speedometer, oil pressure guage, Fuel guage, Thermometers.
14. Cables for speedometer, clutch and Brake.
15. Brake assembly, Master cylinder, Wheel cylinder, their parts and repair kits, Brake spings.
16. Carburettor assembly and its components.
17. Radiator and its core.
18. Distributor and its parts.
19. Carbon brushes and springs for starter motor and Dynamo.
20. Horn relay, Horn diaphragm and Horn contact.
21. Flasher units.
22. Voltage regulator.
23. Propeller shaft.
24. Universal joint and its parts.
25. Transmission Chains.
26. Hubs.
27. Hanger Brackets, Shackles for front and rear sping.
28. Shock absorber link.
29. Leather washer, Spring, Packing & Connections and Cylinder repair Kit for Broke Booster.
30. Piston, piston rings, Valve disc and Suction valve cap for Booster compressor type.
31. Front axle tie rod ends, Drag link ends, King pin repair kit.
32. Wheel rim and disc assembly.
33. Throttle control and Throttle control tube
34. Door Locks.
35. Lifting jacks.
36. Grease nipple.

37. All Types of gaskets.
38. All types of oil seals.
39. All types of bearings.
40. All types of gears.
41. All types of metal and rubber bushings.
42. All types of fasteners i.e. bolts, studs, screws, nuts and washers.

(मुख्य नियंत्रक, आयात-निर्यात का कार्यालय)

आदेश

नई दिल्ली, 9 मई, 1989

का. मा. 1229.—मैसर्स टाटा डेवी लिमिटेड का मुक्त निर्यात मूद्रा के अंतर्गत रोटरी डिस्चार्ज मशीन डायम आदि के आयात के लिए 1,02,96,100- रु. (केवल एक करोड़, दो लाख, छयानव हजार एक सौ रुपए) (डी एम 15,29,484) का आयात लाइसेंस सं. पी/सी. जी/2102946/सी 20/03/एच/87/सी. जी-1, दिनांक 30-1-87 जारी किया गया था।

क्रम में मद्रा की सूची सहित उक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुमिति प्रति जारी करने के लिए इस आधार पर आवेदन किया कि सूची सहित लाइसेंस की सीमाशुल्क प्रयोजन प्रति की प्रतया गुम हो गई है, आरो यह भी उल्लेख किया गया है कि लाइसेंस की सीमाशुल्क प्रयोजन प्रति किसी भी सीमाशुल्क प्राधिकारी के पास पंजीकृत नहीं थी और इस तरह सीमाशुल्क प्रयोजन प्रति के मूल्य का बिल्कुल भी उपयोग नहीं किया गया है।

2 अपने तर्क के समर्थन में, लाइसेंसधारी ने नोटरी पब्लिक, कलकत्ता के मामले दियवत् पथ लेकर एक शपथपत्र दाखिल किया है। तदनुसार मैं संतुष्ट हूँ कि आयात लाइसेंस सं. पी/सी. जी/2102946, दिनांक 30-1-87 की मूल सीमाशुल्क प्रयोजन प्रति और माल की सूची क्रम में खो प्रतया गुम हो गई है। यथासंशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 की उप-धारा 9(गग) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स टाटा डेवी लिमिटेड को जारी उक्त मूल सीमाशुल्क प्रयोजन प्रति सं. पी/सी जी/2102946 दिनांक 30-1-87 एतद्वारा रद्द की जाती है।

3. उक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुमिति प्रति माल को सूची सहित पार्टी को अलग से जारी की जा रही है।

[सं. सी. जी.-1 सी डी ई-33/86-87]

पान बैंक, उप मुख्य नियंत्रक, आयात-निर्यात

(Office of the Chief Controller of Imports & Exports,

ORDER

New Delhi, the 9th May, 1989

S.O. 1229.—M/s. Tata Davy Limited were granted an import licence No. P/CG/2102946/C/XX/03/H/87/CG. I dated 30th January, 1987 for Rs. 1,02,96,100 (Rupees One Crore Two Lakhs Ninety Six Thousand & One Hundred Only) (DM 15,29,484) for import of Rotary Discharge Machine Diam etc. under Free Foreign Exchange.

The firm has applied for issue of Duplicate copy of Customs purposes copy of the above mentioned licence along-with the list of goods on the ground that the original Customs purposes copy of the licence with list has been lost or misplaced. It has further been stated that the Customs purposes copy of the licence was not registered with any Customs Authority and as such the value of Customs Purpose copy has not been utilised at all.

2. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public Calcutta. I am accordingly satisfied that the original Customs Purposes copy of Import Licence No. P/CG/2102946 dated 30th January, 1987 and the list of goods has been lost or misplaced by the firm. In exercise of the powers conferred under sub-clause 9(cc) of the Import (Control) Order, 1955 dated 7th December, 1955 as amended the said original Customs Purposes copy No. P/CG/2102946 dated 30th January, 1987 issued to M/s. Tata Davy Limited is hereby cancelled.

3. A duplicate Customs Purposes copy of the said licence with list of goods is being issued to the party separately.

[No. CG. I/CDE-33/86-87]

PAUL BECK, Dy. Chief Controller
of Imports & Exports

ऊर्जा मंत्रालय

(कोयला विभाग)

शुद्धिपत्र

नई दिल्ली, 4 मई, 1989

का. मा. 1230 भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) तारीख 24 दिसम्बर, 1988 में 4711 से 4713 पर प्रकाशित भारत सरकार के ऊर्जा मंत्रालय (कोयला विभाग) का अधिसूचना सं. का. मा. 3688 तारीख 28 नवम्बर, 1988 में—

पृष्ठ 4711 पर—

अधिसूचना में—

अर्थन के संबंध में आक्षेप में—

(1) अधिसूचना के निकाले जाने के "तीन दिन के भीतर" के स्थान पर "तीस दिन के भीतर" पढ़िए।

अनुसूची में—

(2) क्रम सं. 1 में ग्राम का नाम स्वप्न मोक्ष में "पेती मटाली" के स्थान पर "पायली मटाली" पढ़िए और जहाँ कहीं यह शब्द प्रयुक्त किया हो उसी जगह "पायली मटाली" पढ़िए।

(3) पायली मटाली ग्राम में अर्जित किए जाने वाले प्लाट संख्या में "133 से 138" के स्थान पर "133 से 136" पढ़िए।

पृष्ठ 4712 पर—

सीमा वर्णन में—

(4) रेखा "क4-क5" में "निरबंजा मोकामा" के स्थान पर "तिर-बंजा मोकामा" पढ़िए और जहाँ कहीं यह शब्द प्रयुक्त किया हो उसी स्थान पर "तिरबंजा मोकामा" पढ़िए।

(5) रेखा क5-क6-क7 में "99,1" के स्थान पर "99/1" पढ़िए।

(6) रेखा क9-क10 में "ग्राम सड़क की बाहरी सीमा" के स्थान पर "ग्राम सड़क की अन्तरी सीमा" पढ़िए।

(7) रेखा क10-क11 में "52, 57, 60" के स्थान पर "52, 57, 60, 44" पढ़िए।

अनुसूची "ख" में—

(8) पायली मटाली ग्राम में अर्जित किए जाने वाले प्लाट संख्या में "98, 100 भाग" के स्थान पर "98, 99, 100 भाग" पढ़िए और "264 भाग, 266 भाग" के स्थान पर "264 भाग, 265 भाग, 266 भाग" पढ़िए।

(9) निरबंजा जग ग्राम में अर्जित किए जाने वाले प्लाट संख्या में "150 से 164" के स्थान पर "150 से 163" पढ़िए।

(10) "कुप संख्या 2 भाग, 3, 7, 8, 9 भाग" के स्थान पर "कुप संख्या 2 भाग, 3, 7, 8 भाग, 9 भाग" पढ़िए।

पृष्ठ संख्या 4713 पर—

सीमा वर्णन में—

(1) रेखा ख1-ख2-ख3 में -"533" के स्थान पर -"553" और "365, 366" के स्थान पर "265, 266" पढ़िए।

(2) रेखा ख3-ख4-ख5 रेखा ग्राम "मटाली" के स्थान पर "नामली मटाली" पढ़िए।

[म. 43015/1/87-सी. ए./एल एम इन्फ्यू]

बी. बी. राव, अवर सचिव

MINISTRY OF ENERGY

(Department of Coal)

CORRIGENDUM

New Delhi, the 4th May, 1989

S.O. 1230.—In the notification of the Government of India in the Ministry of Energy (Department of Coal) S.O. No. 3688 dated the 28th November, 1988, published in the Gazette of India dated the 24th December, 1988, Part-II, Section 3, Sub-Section (ii) at pages 4713 to 4715.

at page 4713

(1) in Note 1, in line 6 to 7, for "Collector Chandrapur (Maharashtra) or in the fields Limited" read "Calcutta or in the office of the Western Coal-fields Limited";

(2) in section 8 of the Act, in sub-section (2) in line 9, for "after houring" read "after hearing";

at page 4715

(3) in line 4, plot numbers to be acquired in village Paili Bhatadi, for "167" read "167 part";

(4) in the plot numbers to be acquired in village Awandha Ray, for "29 part" read "92 part";

(5) in the boundary description,

(a) line B7-B8-A6, in line 2, for "Range party" read "Range partly";

(b) line A9-A10, in line 3, for "187" read "178".

[No. 43015/1/87-CA/LSW]

B. B. RAO, Under Secy.

विज्ञान और प्रौद्योगिक मंत्रालय

(विज्ञान और प्रौद्योगिकी विभाग)

नई दिल्ली, 27 मार्च, 1989

का. प्रा. 1231.—केंद्रीय सरकार, राजभाषा संघ के शासकीय प्रयोजनों के लिए प्रयोग नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में एकादश विज्ञान और प्रौद्योगिकी मंत्रालय (विज्ञान और प्रौद्योगिकी विभाग) के अधीन निम्नलिखित संस्थान को, जिसके कर्मचारियों में उक्त नियम के प्रयोजनों के लिए हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है अधिसूचित करने हैं :

संशोधन प्रशिक्षण संस्थान,

राष्ट्रीय शोधन विभाग,

हैदराबाद (प्रमुख प्रयोग)

[म. ई-11012/1/86-हिन्दी]

मधु सुशान धरमाला, उप निदेशक (

MINISTRY OF SCIENCE AND TECHNOLOGY

(Department of Science and Technology)

New Delhi, the 27th March, 1989

S.O. 1231.—In pursuance of Sub-Rule (4) of Rule 10 of Official Language (Use for official purposes of the Union) Rules, 1976 the Central Government hereby notifies the name of the following subordinate office under the Ministry of Science and Technology, Department of Science and Technology, the staff whereof have acquired the working knowledge of Hindi :

Survey Training Institute,

Survey of India,

Hyderabad.

[No. E-11012/1/86-Hindi]

M. S. DHASMANA, Dy. Director (O.L.)

मानव संसाधन विकास मंत्रालय

(गंस्कृति विभाग)

नई दिल्ली, 5 अप्रैल, 1989

का. प्रा. 1232—केंद्रीय सरकार राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (गंस्कृति विभाग) के अधीन निम्नलिखित कार्यालय को, जिसमें 80% से अधिक कर्मचारियों में हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करने हैं :-

1. महकूम स्मारक संग्रहालय एवं पुस्तकालय,

सोन मूर्ति भवन, नई दिल्ली - 110011

[म. एक. 28-5/89 - मानव]

अंशु वैश्य, उप सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Culture)

New Delhi, the 5th April, 1989

S.O. 1232.—In pursuance of sub-rule 4 of rule 10 of the Official Languages (use for official purposes of the Union) Rules, 1976. The Central Government hereby notifies the following Office under the administrative control of Ministry of Human Resource Development (Department of Culture) more than 80 per cent of staff of which have acquired working knowledge of Hindi :-

1. Nehru Memorial Museum & Library, Teen Murti House, New Delhi-110011.

[F. No. 28-5/89-General]
ANSHU VAISH, Dy. Secy.

दिल्ली विकास प्राधिकरण

(मुख्य योजना अनुभाग)

नई दिल्ली, 27 मई, 1989

का. प्रा. 1233—दिल्ली विभाग अधिनियम, 1957 (1957 का 61) की धारा 57 की उपधारा (1) द्वारा पश्चिम गलियों का प्रयोग करने हुए दिल्ली विकास प्राधिकरण, केंद्रीय सरकार के पूर्व आनोख में एउदराय हाटल, मोडिन हाटल, गेस्ट हाउस, होस्टल, लॉजिंग हाउस और सोडल (सर्वत मानक) अधिनियम, 1977 में निम्नलिखित संशोधन करनी है :-

1. "विनियम 6 (1) (i) में निम्नलिखित शब्द हटाए जाते हैं :-

"विनियम उप राजधानी के मातोधिकार में न्यूनतम 400 मोटर (1320) के सेट-बैक महिन हो"।

2. "विनियम 6 (1) (ii) हटाया जाता है"।

3. विनियम 6 (2) (iii) में "सामने की ओर 15.21 मीटर (50 फुट) के न्यूनतम सेट-बैक" शब्दों के स्थान पर निम्नलिखित प्रतिस्थापित किया जाना है :-

"सामने की ओर 50 मीटर (165 फुट) के न्यूनतम सेट-बैक"

[एफ. - 1 (17)/74-एम. पी.]

DELHI DEVELOPMENT AUTHORITY (Master Plan Section)

New Delhi, the 27th May, 1989

S.O. 1233.—In exercise of the powers conferred by sub-section(i) of Section 57 of the Delhi Development Act, 1957 (No. 61 of 1957), the Delhi Development Authority with the previous approval of the Central Government hereby makes the following amendments to the Hotels, Boarding Houses, Guest Houses, Hotels, Lodging Houses and Motels (Building Standards) Regulations, 1977 :—

AMENDMENTS.

1. "In Regulation 6(1) (i) the following words are deleted :—

"The Building is set-back by the least 400 metres (1320') from the right of way of such a highway."

2. "Regulation 5(1) (ii) is deleted".

3. In Regulation 6(2)(iii) the words "minimum set backs of 15.24 metres (50 ft.) in front." is substituted as :

"minimum set back of 50 mtrs. (165 ft.) in from."

[F. 1(17)/74-MP.]

सार्वजनिक सूचना

का. धा. 1234—केन्द्रीय सरकार का दिल्ली की मुख्य योजना/क्षेत्रीय विकास योजना में निम्नलिखित संशोधन करने का प्रस्ताव है, जिसे जनता की जानकारी के लिए एम्बेडर द्वारा प्रकाशित किया जाता है। प्रस्तावित संशोधन के संबंध में यदि किसी व्यक्ति को कोई आपत्ति हो अथवा सुझाव देना हो तो वह अपनी आपत्ति अथवा सुझाव लिखित रूप में इस सूचना के जारी होने की तिथि से तीस दिन की अवधि के अन्दर सचिव, दिल्ली विकास प्राधिकरण, विकास सदन, ब्लाक "बी" फार्ड, एन. ए. नई दिल्ली को भेजें। आपत्ति करने अथवा सुझाव देने वाले व्यक्ति को अपना नाम और पता भी अवश्य देना चाहिए।

संशोधन :

"उत्तर में पिडवाला कला गांव की ओर जाने वाली सड़क, दक्षिण और पूर्व में कृषि हरित क्षेत्र और पश्चिम में विद्यमान राजकीय उच्चतर माध्यमिक विद्यालय, पिडवाला कला से घिरे हुए लगभग 999.82 वर्ग मीटर (पट्टा सं. 67/5) क्षेत्र का भूमि उपयोग 'कृषि हरित क्षेत्र' में संस्थापित" (डिस्पेंसरी) में बदला जाना प्रस्तावित है।

2. प्रस्तावित संशोधन का दर्शाने वाला नक्शा निरीक्षण के लिए उपर्युक्त अवधि के अन्दर सभी कार्य दिवसों में उप निदेशक, मुख्य योजना अनुभाग, विगत मीनार, छठी मंजिल, इन्द्र प्रस्थ इस्टेट, नई दिल्ली के पास उपलब्ध होगा।

[एफ. 20 (13)/86 - एम. पी.]

जनक जुनेजा, सचिव

(दिल्ली विकास प्राधिकरण)

PUBLIC NOTICE

S.O. 1234.—The following modification which the Central Government proposes to make to the Master Plan/Zonal Development Plan for Delhi, is hereby published for public information. Any person having any objection or sugges-

tion with respect to the proposed modification may send the objection or suggestion in writing to the Secretary, Delhi Development Authority, Vikas Sadan, I.N.A., 'B' Block, New Delhi within a period of thirty days from the date of issue of this notice. The person making the objection or suggestion should also give his name and address.

MODIFICATION :

"The land use of an area, measuring about 999.82 sq. mtrs. (Patta No. 67/5) bounded by the road to Pindwala Kalan village in the North, Agricultural Green on the South and East and Existing Govt. Hr. Sec. School, Pindwala Kalan on the West is proposed to be changed from 'Agricultural Green' to 'Institutional' (Dispensary)".

2. The plan indicating the proposed modification will be available for inspection at the office of the Deputy Director, Master Plan Section, Vikas Minar, 6th Floor, J.P. Estate, New Delhi on all working days within the period referred to above.

[F. 20(13)|86-MP.]

JANAK JUNEJA, Secy.
Delhi Development Authority

अस संश्लेष

नई दिल्ली, 5 मई, 1989

का. धा. 1235—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार केरला सिरेमिक्स लि., कुन्दारा, के प्रबंधन से सम्बद्ध निोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिग्रहण कृत्रिम, केरला के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-89 को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 5th May, 1989

S.O. 1235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Quilon, Kerala as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kerala Ceramics Ltd., Kundara and their workmen, which was received by the Central Government on 1st May, 1989.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
QUILON

(Dated, this the 17th day of April, 1989)

PRESENT :

SRI. C. N. SASIDHARAN
INDUSTRIAL TRIBUNAL
IN

INDUSTRIAL DISPUTE NO. 17/87
BETWEEN

The Managing Director, Kerala Ceramics Ltd., Kundara,
Kerala.

(By Sri. V. Sugathan & Sri. V. Viswarajan, Advocates,
Quilon)

AND

The General Secretary, Kerala Ceramics Workers Federation,
H. O. Nanthancode, Trivandrum.

(By Sri. N. Kunjkrishna Pillai, Advocate, Quilon)

AWARD

The Government of India, as per order No. L-29011|14| 85-D.II(B), dated 20-8-1987 has referred this industrial

dispute between the above parties for adjudication to this Tribunal. The issue referred is the following :—

SCHEDULE

"Is the management of Kerala Ceramics Ltd., Kundara justified in deducting the whole of wages of one section and part of wages of another section of workmen of Kaolin division of the company for 7-11-1984 on the plea of no work no pay. If not, to what relief the workmen are entitled?"

2. The General Secretary of the union espousing the cause of the workmen in this case has filed a claim statement. It is stated there in that the workers involved in this case are working in the Kaolin division of the management company. The wages of the workmen are being payable on or before 3rd day of the succeeding month. But wages for the month of October 1984 were not paid till 7-11-1984. On 7-11-1984, the management has arranged a condolence meeting in the company to mourn the death of late Prime Minister Smt. Indira Gandhi. The workers as usual attended work in their sections at 8 AM on that day. The workers attended the condolence meeting convened by the management there at 9.30 A.M. The function took a little time and when it was disbursed a section of the workmen sought reason for not paying their wages for the month of October. The workmen approached the Plant Manager for this purpose. The response of the plant manager was most repulsive and this agitated these employees. But the intervention of the union leaders pacified the workmen and the workers went to their work spot and continued their work. The interruption in the work thus caused was quite negligible. The plant manager was a bit unhappy due to this incident and he wanted to teach the workers a lesson. His decision was to punish the workmen by cutting the wages for the day. He split the workers into two categories and paid half the wages for one category and denied complete wages for the day for the second category so that it may not appear as a punishment. The workers were not given any notice for taking any such action. This was done as no work no pay affair. According to the union this conduct of the management was uncalled for illegal and against the provisions of the standing orders. The punishment imposed on the workers must be deemed to be for some misconduct for which they were never told and no domestic enquiry was conducted to find out the truth. Such a punishment is liable to be set aside. The management adopted the tactics of divide and rule and cut the pay of certain workers for half the day and other workers are not paid wages at all. This is in law tantamounts to victimisation and unfair labour practice. The workers attended their work as usual except for the period they attended the meeting. Therefore they are entitled to get full wages for the day.

3. The management opposed the claim of the union. In the reply statement it is stated that condolence meeting was arranged on 7-11-1984 at 9.15 AM on the death of late Prime Minister Smt. Indira Gandhi. This meeting was attended by all the workers and lasted only 15 minutes. The workmen, after the meeting in a group proceeded to the plant manager's office and held him under Gherao till 3.30 PM. As the workers refused to work and acted illegally a notice was published on 7-11-1984 informing them that their action will call for deduction of wages and for other actions. All the appeals of the management were not heeded to by the workmen and the help of police was sought by the management. The police arrived at 3.30 PM and Gherao was lifted. The management therefore paid wages proportionately to those workmen who have done some work. No wages were paid to those who did not work at all. On 8-11-1984 advance individual notices were given to those workers and final notices were also given on 21-11-1984. The management has deducted wages after complying with all legal formalities. The interruption in work was not negligible. The action of the workers will call for huge loss to the management. The claim for wages without doing any work is illegal and unsustainable. The decision to deduct wages was taken by the management and not by the plant manager. It was not done as a punishment. Wages were not paid on the princi-

ple of no work no pay and not by way of punitive action. The action of the management is not illegal or opposed to the provisions of the standing orders. There was no necessity to conduct any domestic enquiry as there was only non-payment of wages for no work done. There was no discrimination since no punishment was awarded. According to the management the workers are not entitled to any reliefs. The further case of the management is that this reference is illegal and no industrial dispute as contemplated under the Industrial Disputes Act, 1947 ('the Act' for short) exists between the parties. The dispute now raised is not one coming under the Act. Therefore this Tribunal has no jurisdiction to decide the issue under reference.

4. The general secretary of the union has given evidence as WW1. The management has examined 5 witnesses as MWs 1 to 5 and Exts. M1 to M11 have been marked on the side of the management.

5. The jurisdiction of this Tribunal to decide the issue involved in this case is questioned by the management. According to the management no industrial dispute exists between the parties as contemplated under the Act. The learned counsel for the management would contend that it is a matter coming under the Payment of Wages Act 1936 as the management has only deducted the wages of the workmen for not doing work. Hence, according to the learned counsel, this dispute is not one coming under the Act and the matter is to be decided by the authority under Payment of Wages Act. On the other hand the learned counsel for the union would contend that the claim for wages is enforceable under the Act also and there is no bar in claiming the wages under the Act, though there is provision under the Payment of Wages Act for claiming wages. The learned counsel derived support for this argument from a decision of the High Court of Kerala in Vimal Printers Vs. Omana, reported in 1982 KLT 923. There, the question considered was whether claims enforceable under Minimum Wages Act could be agitated in proceedings under Sec. 33 C(2) of the Act. The High Court, after considering Sec. 24 of the Minimum Wages Act which deals with bar of suits under that Act, held thus in paragraph 6 :

6. "It appears to me that S. 24 of the Minimum Wages Act furnishes some clue, though not a complete answer. That section reads :—

"24 Bar of suits.—No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed—

- (a) forms the subject of an application under S. 20 which has been presented by or on behalf of the plaintiff, or
- (b) has formed the subject of a direction under that section in favour of the plaintiff, or
- (c) has been adjudged in any proceeding under that section not to be due to the plaintiff, or
- (d) could have been recovered by an application under that section."

The indication is that while enacting the above provision, the legislature had thought about the question whether other remedies for enforcing claims under the Act should be excluded or not, and that having so thought about it; it had decided that only remedies by way of suit need be excluded. S. 24 prevents a court from entertaining suits for recovery of wages which could be recovered by filing an application under S. 24. It does not bar other methods of recovery. An intention to exclude recourse to remedies other than civil suits, is not disclosed; on the other hand, the specific exclusion of civil suits only implies that the legislature did not want to exclude other remedies. The scope for invoking the principle laid down in the State of Punjab v. Labour Court (1981-1 LLJ. 354) thus becomes limited."

Further on referring a Supreme Court decision in Bombay Gas Company vs. Gopal Bhiva [1982 (2) LLJ 608] the Supreme Court made the following observation in paragraph 10 :

"No doubt, the question considered was one relating to limitation and barred claims, but the employers plea that 'the jurisdiction conferred on the payment authority is exclusive', was not accepted. The Court noticed that the problem of recovery of wages had been tackled by the legislature in the Payment of Wages Act, and still held that S. 33C(2) of the Industrial Disputes Act could also be used for the same purpose. S. 20 of the Minimum Wages Act is similar to S. 15 of the Payment of Wages Act, and it should therefore follow that claims arising under the former Act could also be tackled under S. 33C(2) of the Industrial Disputes Act."

The above observations of the High Court equally apply to the facts and circumstances of the instant case.

The learned counsel has brought to the notice of this Tribunal another decision of the High Court of Kerala in *Hindi Prachar Press vs. State of Kerala and other* (1982 KLT 285). That was a case under the Minimum Wages Act, 1948. This claim made by the worker in that case was barred by limitation and therefore the worker filed a petition under Sec. 33C(2) of the Act. There also the employer contended that the worker made the claim not before the forum under the Minimum Wages Act but before the Labour Court under the Act. It was further contended that the matter was barred by limitation. Rejecting the contention of the employer the High Court held thus in paragraph 3 of the judgement :

"It is true that in a case where a separate self contained machinery is specifically provided under a particular enactment, a claim based on the provisions of that enactment must ordinarily be made before the competent authority set up under that statute, and not under the general provisions of the Industrial Disputes Act. But where in a case, such as the present a claim under the Minimum Wages Act had become barred and the order is not made appealable to any higher authority under that Act, there is no taboo as such in law against an aggrieved employee approaching the authority invested that power under Section 33-C(2) of the Industrial Disputes Act."

After referring Supreme Court decision in *Bombay Gas Company Vs. Gopal Bhiva* (supra). The Court further observed thus in the same paragraph.

"The object of the legislature behind of this enactments is to do justice to the employees who legitimately contend that they are denied their due share".

Though the above decision is not directly applicable the principle laid down in this decision applies here also. In the case before me, the management deducted the wages under the Payment of Wages Act and an authority is constituted under that Act to deal with such matters. But as ruled by the High Court of Kerala in the above decisions there is no bar as per the Payment of Wages Act in claiming the wages under the Act also. I therefore hold that the present claim of workmen is enforceable under the Act and this Tribunal has jurisdiction to decide the issue under reference. The objection raised by the management therefore fails.

6. I shall now pass on to the merits whether the management is justified in deducting the salary of the workman. The case of the union is that the management failed to pay salary for the month of October till 7-11-1984 though as per the practice followed in the company salary was being paid on the 3rd day of every month. So the workers of Kaolin division, after the condolence meeting convened by the management at 9.15 AM on 7-11-1984, met the plant manager and demanded salary. Though the behaviour of plant manager towards workmen was reprehensible, on the intervention of union leaders the workers disbursed and went to their respective work spots. Accordingly to the union the plant manager was unhappy and he decided to cut the wages as a punishment for the improper behaviour of workmen. On the other hand, according to the management the workers gheraoed the plant manager till 3.30 P.M. on that day and gharao was lifted with the help of police after 3.30 PM. The worker did not attend work after 9.15 A.M. and salary was proportionately deducted on the principle of no work no pay.

7. According to the union the interruption of duty was negligible and there is no justification for deduction of the salary. It is specific to note that the period of interruption of duty is not at all stated in the claim statement of union. Since the union asserted that the workmen attended their work immediately after the condolence meeting and continued there till the end of the shift the burden is on the union to establish that aspect. MW-1, the General Secretary of the union alone has given evidence on the side of the union. According to this witness he was in his work spot till the end of the shift on 7-11-1984 except for the period he attended the condolence meeting and met the plant manager. He has stated before this Tribunal that he is not aware of the incidents happened outside his section on that day except for the period mentioned above. If that is so, his evidence that the workmen attended their work after 9.15 AM cannot be accepted. But there is nothing on record to show that he was in his section till the end of the shift after the condolence meeting and the evidence of management which I shall discuss below proves that MW-1 was in front of the cabin of Engineer along with other workers involved in this case demanding salary and obstructions plant manager. His statement is not helpful to the union on that ground also. No other workman has given evidence in support of the unions case. On the contrary MWs 1 to 5 gave evidence in support of the management's case and Exts. M-1 to M-11 have also been marked. MW-1 is the production Engineer. He has stated that he was the shift Engineer on 7-11-1984 for the shift 8 A.M. to 4 P.M. He has proved Ext. M-2 daily report prepared by him as per the existing practice on the company. It is recorded in Ext. M-2 that there was a condolence meeting on that day at 9.15 AM and that the workers of Kaolin division demanded salary and they started sitting in front of the Engineer's cabin. The plant manager and Engineer were inside the cabin and workers continued there till the end of the shift. MW-2 has categorically denied the suggestion of the learned counsel for the union that Ext. M-2 was fraudulently prepared for the purpose of this case. MW-2 has further stated that they does not make alterations in daily reports like Ext. M-2 though it is kept in the custody of management. According to this witness, this could be made clear by verifying the daily reports prepared before and after 7-11-1984. The management is admittedly in possession of those reports. But the union has not made any attempt to call for those reports though the burden is on the union to impeach the veracity of Ext. M-2 and the statement of MW 2. The union thus failed to establish that the entries in the 'note' column on Ext. M-2 are in correct. It is also not proved that MW-2 is giving false evidence to help the management. I do not find any reason to disbelieve the deposition of MW-1 and Ext. M-2 report prepared by him. Further, MW-2 the plant manager and MW-3 personnel officer have stated that are records in every section showing the work done by the employees. The management was not called upon to produce such records also which would have been the best evidence to prove that the workman worked in their respective sections on 7-11-1984 the management with the evidence of MW-1 and Ext. M-2 prima facie proved that the workmen in question continued sitting in front of the Engineers cabin till the end of the shift on 7-11-1984 after the condolence meeting and thereby failed to attend work.

8. The other evidence of management may be considered with the above background. MW2 was the plant manager on 7-11-1984. He has stated that the workers of Kaolin division surrounded him till 3.30 P.M. on that day after the condolence meeting demanding wages and he was released by the police. He has further stated that the workers did not attend their sections after his release by police. He has proved Ext. M3 and M4 reports issued from the sections to show that certain workers were not in the sections. Ext. M3 is a report sent from the despatch section by chageman, Sri Madhavan Pillai. But Ext. M3 is not properly proved by examining the chageman who had issued that report. Further Ext. M3 is despatched from the section on 9-11-1984 though according to MW2 the usual practice is to send report of such incidents daily. No explanation is also forthcoming for the delay. Hence Ext. M3 cannot be considered. Ext. M4 is the report sent by a supervisor Sri Cleetus from loading section to the plant manager. Sri Cleetus was examined as MW5. He has stated that he has given Ext. M4 reported stating that there was no work in the loading section and

the workers did not do any work on 7-11-1984. But Ext. M4 was issued on 14-11-1984 only. The explanation of MW5 for the delay is that the practice in the company is to give report for the whole affairs of a week together on the salary day. But there is nothing on record to show that 14th was a salary day. It has come in evidence that salary was being paid on the 3rd day of every month. Therefore his explanation for the delay in sending M4 is not acceptable. Hence Ext. M4 also cannot be acted upon. Further as per Ext. M4 there was no work in the loading section on that day. But MW2 has stated that the workers entered the company and worked till 9.15 AM. As per Ext. M1-series time cards also the workers entered the factory at 8 AM. Hence the statement of MW5 and Ext. M4 cannot be accepted for this reason also. However nothing has been brought out by the union to disbelieve or discredit the statement of MW2. The union failed to establish that the deduction of wages for 7-11-1984 was made by the management at the instance of MW2 for merely demanding wages for the month of October by the workmen to MW2.

9. MW3 is the personnel officer. He has deposed that on 7-11-1984 after the condolence meeting he saw some workers under the leadership of WW1 moving to the plant manager's room for demanding the salary of previous month. He has further deposed that after 5 minutes of such movement of workers he got information from security guard's room that plant manager was gheraoed by the workers. He intimated this incident to the manager who was in charge of Managing Director and also to the police. According to him one Mr. N. P. Ravi, section officer has given complaint to the police regarding gherao. But Sri Ravi was not examined. The reasons for his non-examination is that he is no longer in the service of the company. This is not a satisfactory explanation for the non-examination of Sri Ravi to prove a vital point. Ext. MW3 has proved Exts. M6 and M7 report book, M8 report, M9 report, M10 series memo and M11 notice. Ext. M6 is the office copy of letter allegedly written by Sri Ravi and given to the police. As I have stated earlier Ext. M6 was not properly proved by examining Sri Ravi. Ext. M7 report book was recorded by the guard on duty. He was not examined and Ext. M7 and M7-A, page 243 of M7 were not properly proved. No reasons have been stated for his non-examination. MW3 was not in a position to identify the guard on duty on 7-11-1984 who has recorded M7-A. M8 is the report of production Engineer stating that some workers whose numbers stated therein attended for duty upto 9.15 AM on 7-11-1984 and after they demanded salary and sat in front of the cabin till 4 PM. This report was also not proved through the production engineer without any reason. Ext. M9 is the report sent by a supervisor from old filter and drying section on 14-11-1984 stating that 13 workmen left the section at 9.30 AM. The supervisor who issued M9 was not examined and M9 was not properly proved through him. Further the delay in sending Ext. M9 and the reason for non-examination of the supervisor are also not explained. Ext. M10-series are four office copies of memos given by mines agent Sri P. T. Jacob stating that four workers in the mines section left the section at 9.20 A.M. and did not return till the end of the shift. Sri Jacob was not examined to prove Ext. M10 series. There is nothing to show that these memos were served to the workmen addressed in it. There is no explanation for the non-production of the originals of M10-series. Ext. M-11 is the office copy of notice published by management and signed by mines agent Sri Jacob stating that fifty workers are not entitled to get salary for 7-11-1984 which will be deducted from the salary for the month of November. Ext. M-11 is also not properly proved by examining Sri Jacob. The explanation given by MW3 in his re-examination is that Sri Jacob is laid up of paralysis of his hands and legs. The management has not made any attempt to prove Ext. M10-series and Ext. M11 notice through Sri Jacob by commission or by other methods. For these reasons Exts. M6 to M11 cannot be acted upon. However I do not find any reasons to disbelieve the statement of MW3 regarding obstruction created by the workers in front of the cabin of plant manager and the subsequent incidents happened in 7-11-1984. Now remains the statement of MW4. He is a member of the contesting union and time keeper in the company. It is true that he is a hostile witness. But his statement cannot be discarded completely on that ground alone. He was declared hostile by management immediately after he started speaking against the management. He has not stated that he has given evidence for management under

threat of loss of job. His statement corroborates with the evidence of other management witnesses. Hence it is acceptable to that extent. He has proved Ext. M1-series, time cards. He has deposed that in Ext. M1-series loss of pay of the workmen who failed to attend duty on 7-11-1984 was recorded by him on the basis of the report received from the sections. He has not stated that the entries in Ext. M1-series were made fraudulently to defeat the interest of workmen. He has further stated that corrections are made regarding loss of pay on the basis of the reports received subsequent from the sections. This witness stated that police came to the factory on the day and that there is no such usual practice. According to this witness police used to come to the factory only if there is particular reasons. This statement of MW4 and M1-series considered along with the evidence of other witnesses of management except MW5 proves that police came to the company and the workers in question failed to do work on 7-11-1984 after the condolence meeting. Therefore I accept the same.

10. The case of the union is that the management had deducted wages of seventy seven workers. But according to the management salary of only fifty workers was deducted. In the reference order the number of workmen involved is not stated. It is also pertinent to note that in the claim statement the union has not stated the number of workmen. It is only in the evidence stage the union secretary has stated that the deduction was made from the salary of seventy seven workers. It can therefore be only an after thought. As per Ext. M1-series cards deduction was made only from the salary of fifty workmen and the union failed to call upon the management to produce the relevant records regarding payment of wages. In the absence of any such records and due to the reasons stated above the case of the management is to be accepted on the basis of Ext. M1-series cards. I therefore hold that the management had deducted salary of only fifty workmen.

11. On consideration of the totality of evidence and circumstances it can be reasonably concluded that the workmen in question remained in front of the Engineer's cabin and held the plant manager under gherao after the condolence meeting till the end of the shift on 7-11-1984 and did not attend their work in the respective sections on that day after 9.15 AM. The union failed to prove it otherwise. The workmen thus illegally abstained from the place of work and refused to do work without any notice to the management. Thereby the workmen caused loss to the management company. As per sections 7 and 9 of the Payment of Wages Act, 1936 the management is entitled to deduct the wages of workers for part of the day when employee was absent. There is no justification for deducting the wages of certain workmen for the whole day by the management in the instant case. As I have stated earlier the workmen worked till 9.15 AM on that day as deposed by MW2 and MW3. The workers are entitled to get their wages for the period from 8 AM to 9.15 AM on that day.

12. The management deducted the whole of wages of one section and part of wages of another section of the Kaolin division. In doing so the management failed to comply with the principles of natural justice and is therefore unjustified due to the following reasons. The deduction according to management was made on the principle of no work, no pay. It is a matter affecting the service conditions of workmen and for taking such an action they should be given notice and opportunity for expressing their views. In the present case no evidence is forthcoming to show that the workers or union were given notice before deducting wages. According to the management it had published Ext. M5 and Ext. M11 notices in the notice board before deducting wages. But there is nothing to show that these notices were served on the union or workmen. There is also no evidence to show that these notices were published in the notice board and that came to the notice of workmen. Further as I have stated in the earlier paragraph No. 9 Exts. M5 and M11 are not properly proved here and cannot be acted upon. Therefore the action of the management in deducting by salary without serving notice and without affording opportunity to explain their case is violative of the principles of natural justice and therefore unjustified to that extent. All the fifty workers are therefore entitled to get their wages for 7-11-1984. How-

ever I make it clear that the management will be at liberty to proceed against these workmen afresh to deduct the wages for the period after the condolence meeting on 7-11-1984 after giving proper notice to them and affording opportunity to explain their case if the management is so advised.

13. In view of the above conclusions, I pass an award holding that the action of the management in deducting the wages of workman of Kaolin division of the company for 7-11-1984 is violative of the principles of natural justice and unjustified to that extent. The workers are entitled to get their wages for that day.

C. N. SASIDHARAN, Presiding Officer
[No. L-29011/14/85-D.II(B)]

APPENDIX

Witness examined on the side of the workmen:

WW1.—Sri C. Nepolean

Witnesses examined on the side of the Management :

MW1.—Sri. G. Muralaetharan Pillai

MW2.—Sri. V. Ramanathan

MW3.—Sri. I. D. Rasalam

MW4.—Sri. T. Nepolean

MW5.—Sri. T. Cleetus.

Documents marked on the side of the Management:

Ext. M1.—Series Punching cards (77 nos.)

Ex. M2.—Report dated 7-11-1984 of the kaolin refining plant.

Ex. M3.—Report sent from the despatch sections to the sub-divisional manager by chageman, Sri. Madhavan Pillai.

Ext. M4.—Report sent to the plant manager by Sri. Cleetus, supervisor, on 14-11-1984.

Ext. M5.—Office copy of notice issued by the management on 7-11-1984.

Ext. M6.—Office copy of letter addressed to the Sub Inspector of Police, Kundara from Sri N. P. Ravi. Security Officer, dated 7-11-1984.

Ext. M7.—Report Book.

Ext. M7-A.—Page 234 of Ext. M7.

Ext. M8.—Inter Office Memo from Production Engineer to the plant manager dated 7-11-1984.

Ext. M9.—Inter Office Memo from old filter press and drying section dated 14-11-1984.

Ext. M10.—Series (4 nos.) office copies of memos published in the notice board and issued by the Mines Manager on 8-11-1984.

Ext. M11.—Office copy of notice published by the Mines Manager on 21-11-1984.

वा. भा. 1236—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुवर्ण में, केन्द्रीय सरकार इन्टरनेशनल ऐयरपोर्ट्स प्राइवेट लिमिटेड का इन्डिया के प्रबंधन से सम्बन्धित निषेधों और उनके कर्मचारियों के बीच, अनुवर्ण में निम्नित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, मई 1947 के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

S.O. 1236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of International Airport Authority of India and their workmen, which was received by the Central Government on 28-4-89.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW
DELHI

I.D. No. 43/87

In the matter of dispute between :

Shri Padam Chand (Deceased) S/o Shri Nanak Chand,
4925/40, Kengar Pura, New Delhi through his
L.Rs.

Versus

The General Manager, International Airport Authority of
India, Delhi Airport, New Delhi

APPEARANCES :

Smt. Som Devi widow of Shri Padam Chand.

Shri R. S. Dalal with Miss Suman Garg for the Manage-
ment.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012/2/86-D.II(B) dated 22 May, 1987 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of International Airport Authority of India Delhi Airport, New Delhi in dismissing Shri Padam Chand, Driver from service w.e.f. 12-10-84 is legal and justified? if not, to what relief the concerned workman are entitled to and from what date?"

2. The workman Shri Padam Chand (since deceased and substituted by his legal representative) started working as a Driver with the Management w.e.f. 22-3-1973. Vide memorandum dated 5-1-84 a charge sheet was served upon him on allegations of the following acts of misconduct :

- (a) Theft, fraud and dishonesty in connection with the property of the Authority within the premises of the Authority.
- (b) Leaving duty place without permission or sufficient cause and taking away the Jeep DED-3055 unauthorisedly.
- (c) Acting in a manner prejudicial to the interests of the Authority.
- (d) Drunkenness while on duty within the premises of the Authority.
- (e) Acting in a manner unbecoming of him as an employee of the Authority.

The explanation submitted by the workman having been found unsatisfactory, a domestic enquiry was instituted and he was found guilty on all the count in the enquiry report dated 25-8-1984. Vide order dated 12-10-1984 the workman was dismissed from service.

3. The workman challenged his dismissal on the ground that the domestic enquiry conducted against him was not fair and proper for the reasons that the Management lodged report with the police and the criminal trial on the same allegations pending and the Management by not waiting for the outcome of the trial had caused prejudice to him in as much as he had to disclose his defence even before the trial was over and this action of the Management was mala fide based and vindictive, that he was not allowed assistance by another reference assistant that he was donate and not conversant with English language whereas the enquiry proceedings were recorded in English language ; that the enquiry officer did not give him proper and sufficient opportunity to prepare his defence and the principles of natural justice were violated all that the punishment of dismissal is extremely harsh, excessive and oppressive and disproportionate to the nature of allegations, levelled against him and any punishments the dismissal could meet the ends of justice. Hence he prayed that his

termination may be set aside and he may be reinstated with continuity of service and full back wages.

4. The Management justified its action and submitted that the conduct of the criminal trial and domestic enquiry is by two different agencies, for altogether different purposes and the degree of proof required in the two proceedings is also different and as such there was no prejudice caused to the workman; that in the enquiry the workman was allowed to take assistance of a co-employee in accordance with the service regulations of the Management but he could not be allowed assistance of an outsider under the service regulations; that the enquiry officer throughout acted fairly, properly, impartially and in accordance with the principles of natural justice as well as service regulations of the Management; it was denied that the workman was illiterate as he had passed high school i.e. 8th standard and that his correspondence was English Language which showed that he was conversant with the English Language and that when the workman expressed his inability in understanding the language, a Hindi translation of all the documents was supplied to him. The enquiry proceedings were also explained to him in Hindi so much so Hindi translator was provided to the workman in the enquiry proceedings who assisted the workman throughout; and that the punishment of dismissal is commensurate with the gravity of the offence/charges levelled and proved against him.

5. I have carefully gone through the record of the domestic enquiry and other documents placed on the file and I am of the opinion that the enquiry has been quite fair and proper and no serious infirmities can be found in it so as to vitiate the same. Hence the domestic enquiry is held to be valid and proper.

6. In the matter of quantum of punishment this case deserves to be viewed with consideration and compassion. In the first instance the deceased workman was a permanent employee of the Management for over 11 years. The charges against him were all of petty nature in as much as he was alleged to have committed theft in respect of a stepney the value of which (although not indicated) could not have exceeded a few hundred rupees and that he was found in a drunken condition while on duty. The punishment of dismissal on these petty charges is undoubtedly extremely harsh and incommensurate with the gravity of the charges. However, another dimension has been added by the death of the workman during the pendency of these proceedings. He has left behind his widow Smt. Som Devi and four children namely Km. Hem Lata 18 years, unmarried, Lalit Kumar 16 years, unemployed, Km. Lalita 12 years student fifth class and Naresh Kumar 9/10 years student 4th Class. Smt. Som Devi has made a clean statement that she does not wish to produce any evidence and that she and her children are in a state of destitution and the case may be viewed compassionately. The fact that the workman has been acquitted in criminal case has also to be kept in view. Under these circumstances the punishment of dismissal is quashed and it is directed that the workman be deemed to have been reinstated and to have continued in service till the time of his death and his legal heirs may be paid all the retirement dues to which the workman was eligible at the time of his death. No back wages are to be paid for the period from termination till the death. The Management may also favourably consider providing employment either to widow or any of the children of the deceased workman in any capacity. This reference is disposed of accordingly. 21st April, 1989.

G. S. KALRA, Presiding Officer

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

21st April, 1989.

G. S. KALRA, Presiding Officer
(No. L-12012/2/86-D. II(B)|D.III(B))

का. प्र. 1237—औद्योगिक विवाद अधिनियम, 1947 (1947 के 14) का धारा 17 के अन्वय में, केन्द्रिय सरकार तेल एवं प्राकृतिक गैस आयोग, देहरादून के प्रबन्ध से सम्बन्धित विवादों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण बालपुर के पंचवट को प्रकृति करता है, जो केन्द्रिय सरकार को 27-4-89 को प्राप्त हुआ था।

S.O. 1237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of O.N.G.C. Dehradun and their workmen, which was received by the Central Government on the 27-4-1989.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR

Industrial Dispute Case No. 125 of 87

Shri Shanti Lal 167, Block First Chukhwala Dehradun
U.P.

AND

The Chairman Oil and Natural Gas Commission Tel
Bhawan Dehradun U.P.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-30012/1/87-D.III (B) dated 22-3-87, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Oil and Natural Gas Commission, Dehradun, in terminating the services of Shri Shanti Lal, Guest House Attendant-cum-Cook w.e.f. 30-9-85, is justified. If not, to what relief is the workman entitled to ?

2. The workman's case is that on the basis of interview held by the management he was appointed as contingent Guest House Attendant cum Cook on daily wages on 20-5-84 and after his appointment he worked during the following periods :—

20-5-84 to 5-12-84

23-1-85 to 28-10-85 (should be 28-1-85)

1-7-85 to 29-9-85

He alleges that his services were terminated by the management w.e.f. 30-9-85. According to him the management is guilty of unfair labour practice. Further the management violated provisions of Articles 14, 16 and 19 of the Constitution. Not only that persons junior to him and newly recruited persons, such as S/Shri Laxman Singh, Vijai Singh, Kishan Lal, Karam Singh, Satyajit, Sunil Kumar and Shri Vikram Singh were given regular employment w.e.f. 15-5-85, 29-4-86, 3-4-86, 4-4-86, 30-4-86, 31-3-87 and 3-4-87 respectively. He has, therefore, prayed that he should be reinstated with continuity of service and full back wages.

3. The case is contested by the management of Oil and Natural Gas Commission, Tel Bhawan, Dehradun. The management's case is that Shri Shanti Lal was a contingent employee who had worked for 161 days during the period of 12 months proceeding the date of his alleged termination on 2-9-85, as per details given in para 2 of the W.S. Prior

to February 1986, he had been engaged as a casual hand on contingent basis for watch and ward of hired office premises intermittently during the periods 20-5-84 to 5-12-84 and 23-1-85 to 28-1-85. In the month of July, 1985 there was in existence a vacancy of casual nature for unskilled daily paid worker on contingent basis for guest house attendant. Since Shri Shanti Lal, who had already worked on contingent basis expressed his willingness to work as casual hand on contingent basis for the unskilled work at Guest House he was engaged as casual hand on contingent basis as an unskilled worker at the guest house on 1-7-85 in fresh employment. He worked as such till 17-9-85 and then from 21-9-85 to 30-9-85. From 1-10-85 Shri Shanti Lal stayed away from work, most probably for his better engagement elsewhere. In other words he did not offer himself for engagement on 1-10-85. Therefore, as per clause 2(iii) of the Certified Standing Orders for Contingent Employees of Oil and Natural Gas Commission, his status was that of a casual workman on 30-9-85. He never worked on any regular and specific post of Guest House Attendant cum Cook on 30-9-85. The management further pleads that the Services of Shri Shanti Lal were not terminated on 30-9-85. In fact he had worked on 30-9-85, and had been paid his wages for 30-9-85. He himself voluntarily stayed away and did not present himself for contingent employment on any date from 1st October 1985. He has not named the persons who had terminated his services as such the bald reference to the management mentioned in the reference order would be of no assistance to him. The facts alleged by Shri Shanti Lal about his having been interviewed on more than one occasions in the claim statement are quite irrelevant and do not affect the merits of the case. It is pertinent to note that in his application to the ALC (C) Dehradun he alleged that he was engaged on 18-8-83, which fact is against his present pleading. The management deny contravention of the provisions of section 25-G I. D. Act and violation of articles 14, 16 and 19 of the Constitution. The management further deny that the management are guilty of unfair labour practice. Lastly, the management plead that in view of the mandatory provisions of Section 10(4) I. D. Act, this Tribunal must confine his adjudication to the justification of the alleged termination of the services of Shri Shanti Lal. It cannot examine the legality of the alleged termination because of absence of such an expression in the reference order.

4. In his rejoinder, the workman has denied the facts alleged by the management in their written statement.

5. In support of his case, the workman has filed his own affidavit and a number of documents and similarly in support of their case, the management have filed the affidavit of Shri Ram Chand Administrative Officer and a number of documents.

6. The first question which arises for determination in this case is whether or not the case of the workman is covered by the provisions of Section 25-F I. D. Act. For this we will have to see as to for how many days during the period of 12 months preceding the date of his alleged termination the workman had worked.

7. The period of 12 months begins from 1-10-84. In his cross examination, the workman was confronted with the original attendance sheet of the month of September 1985, copy of which is Ext. M-9. After seeing that the workman admitted that his signatures did not appear on 18th, 19th and 20th September, 1985. He tried to explain the non marking of attendance by saying that on these 3 dates the Dy. Director took from him the domestic work. This fact is no where pleaded by the workman. The total number of days therefore, comes to 161, and if the above 3 days are also taken into consideration the total number of days would come to 164. Therefore, he cannot be considered as having rendered one year continuous service within the meaning of Section 25-B I. D. Act during the period of 12 months preceding the date of termination on 30-9-85.

8. The only point, therefore, which remains for consideration is whether or not the management has committed breach of the provisions of section 25-G I. D. Act. I may state here that from the side of the workman his authorised representative Shri Bhupender Singh, has not pressed any other point. The defence set up by the management is that w.e.f. 1-10-85, the workman himself stayed away from the job.

9. It has been contended by Shri Bhupender Singh, that Section 25-G is independent of section 25-F I. D. Act. There is no dispute about the legal position on the point. We have simply to see whether there had been any breach of the provisions of section 25-G I. D. Act, by the management or not.

10. Ext. W-4 is the copy of workman's letter dated 16-10-85 addressed to the Chairman, Oil and Natural Gas Commission the Member, Personnel, Oil and Natural Gas Commission and the Director Personnel, Oil and Natural Gas Commission, Dehradun. In para 6 of his letter the workman has written that S/Shri Jai Karan, Kram Singh and Shiv Lal have been appointed on contingent basis w.e.f. 1-1-84, 13-11-84 and 4-7-1985 without interview. There is nothing in this letter to show that any person junior to him has been retained in service. Ext. M-1 is the copy of application dated 11-8-86 made by the workman before the Assistant Labour Commissioner, Central Dehradun. In his said application he claimed to have been appointed as Guest House Attendant cum Cook on 18-8-83, which fact is against his pleading. Once again he raised no plea to the effect that junior to him have been retained in service.

11. For the first time in para 11 of his claim statement he mentioned the name of some 7 person whom he describe as junior to him and fresh recruits having been appointed on regular basis from the dates mentioned against their names. These persons with the dates given by him are as under :-

1. Laxaman Singh	15-5-85
2. Kishan Lal	3-4-86
3. Karam Singh	4-4-86
4. Vijay Singh	29-4-86
5. Satyajit	30-4-86
6. Sunil Kumar	31-3-86
7. Vikram Singh	3-4-87

In para 5 of his affidavit he has deposed that the services of the above named persons were regularised w.e.f. dates shown against their names. It is also important to note that the workman made an effort to summarise the records with regard to the above named 7 persons in order to make out his point.

There is nothing to show that the above named persons were appointed as contingent Guest House Attendant cum Cooks. No where in his evidence, oral or documentary, the workman has given the dates of their appointment. Here I would like to refer to the Ruling in the case of K. V. Subbarao and others Vs. Government of Andhra Pradesh and others (1988) Administrative Tribunals Cases 394 (SC). In the said case before their Lordships of the Hon'ble Supreme Court, Rule 33(a) of A.P. State and Subordinate Services Rules 1962, came up for consideration. The rule provided that the seniority of a person was to be determined by the date of his first appointment to such services, unless he has been reduced to a lower rank as a punishment. Their Lordships observed that it was appropriate to interpret the rule to mean that the date of first appointment was intended to refer to continuous appointment only and the words 'unless he has been reduced to a lower rank by way of punishment' or redundant. So for the purposes of determination on the point whether there had been any breach of the provisions of section 25-G, I. D. Act, we will have to see first. The days of continuous appointment of the workman Shri Shanti Lal vis-a-vis 7 persons named above. So far as Shri Shanti Lal is concerned as we have seen above his continuous appointment started from 21st September, 1985 and lasted till 30-9-85. I have already referred to his evidence in his cross examination wherein he has admitted that he had not marked his attendance on 18th, 19th and 20th September, 1985. I have also stated above that from the side of the workman there is nothing to show as to when the continuous appointment of the above named 7 persons started.

12. Ext. M-2, is the copy of certified standing orders for contingent employees of the Oil and Natural Gas Commission. The authorised representative of the workman has

waived its formal proof. According to clause 2, there are two kinds of contingent employees. One temporary and the second casual. A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman provided that a temporary workman who has put in not less than 240 days and who possess the minimum qualification prescribed by the Commission may be considered for conversion as regular employee. It further provides that a workman who is neither temporary nor regular shall be considered as casual workman. Thus according to the Certified Standing Orders, the status of the workman in question was that of a casual workman.

13 It appears from the evidence of the management witness Shri Ram Chand that there are two Guest Houses and those were in existence in 1984 and 1985. According to the witness he was in charge of the two guest houses in those days. At page 4 the witness has stated that there is a post of Guest House Attendant cum Cook. There is no evidence from both the sides to show as to how many posts of Guest House Attendant cum Cook were there in the two guest houses in 1984 and 1985. It is common knowledge that at Guest House there is not more than one such post. In the circumstances I fail to understand how as many as 7 persons named above could have been regularised in the category of Guest House Attendant cum Cooks.

14. With regard to Shri Jai Kishan and Shri Karam Singh the management witness has stated in his cross-examination at page 4 that they have been working from before the appointment of Shri Shanti Lal, the workman in question. About others he expressed his ignorance as to when they were recruited. The burden of proof being on the workman he should have given cogent and reliable evidence to show that at the time of the termination of his services they being junior to him were retained in service.

15. There being no material on record that juniors had been retained, the question of breach of section 25-G I, D. Act does not arise. Hence, even if it is said that his services were terminated w.e.f. 30-9-85, he has no case at all.

16. Hence, the action of the management of Oil and Natural Gas Commission, Dhradun, in terminating the services of Shri Shanti Lal on 30-9-85 cannot be held as unjustified. The workman is entitled to no relief.

17. Reference is answered accordingly.

ARJAN DEV, Presiding Officer
[No.L-30012/87-D.II (B)]

का. प्र. 1238—औद्योगिक विवाद अधिनियम, 1947 (1947 का

14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बोकारो स्टील प्लांट (सेल) की किरीबुरु कामरल और माईन के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिपक्ष नं. 1, धनुबाद के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-4-89 को प्राप्त हुआ था।

S.O. 1238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kiriburu Iron Ore Mine of Bokaro Steel Plant (SAIL) and their workmen, which was received by the Central Government on the 27-4-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of
the Industrial Disputes Act, 1947.

Reference No. 21 of 1987.

PARTIES :

Employers in relation to the management of Kiriburu
Iron Ore Mine of Bokaro Steel Plant (SAIL).

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers : None.

For the Workmen : None.

STATE : Bihar.

INDUSTRY : Ore

Dated, the 17th April, 1989

AWARD

By Order No. L-26012/3/86-D. II(B)/D. II(A), dated, the 16th November, 1987, the Central Government in the Ministry of Labour, has in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the management of Kiriburu Iron Ore Mine is justified in not restoring the seniority to Shri Govind Sahay, Sr. M.C.O. as if he was not dismissed from the service w.e.f. 13-12-67 although his break in service for the period 13-12-67 to 21-6-68 has been condoned? If not, what relief the workman is entitled to?"

2. The order of reference of the present industrial dispute was received in the office of the Tribunal on 26-11-87. The appropriate Government directed the parties raising the dispute to submit statement of claim complete with relevant documents, list of reliance and witnesses before the Tribunal within 15 days of the receipt of the order and to forward a copy of such statement to the opposite parties involved in the dispute.

3. It appears that General Secretary, Khan Mazdoor Sangh, Kiriburu, Singhbhum, raised the present industrial dispute. After receipt of the order of reference in this Tribunal date was fixed for further order on 22-1-1988. The Tribunal remained closed on the date fixed and the next date was fixed on 16-2-88 for further orders. On 16-2-88 none of the parties arrayed appeared and 15-3-88 was fixed for appearance of the concerned workman or the union and for filing written statement. Notice was issued to the parties by Registered Post. It appears that notice to the General Secretary, Khan Mazdoor Sangh, was returned with the remark that the post of General Secretary was dispute. In the circumstances the order was passed requesting the Asstt. Labour Commissioner (C), Dhanbad/Chaibasa for causing service of notice fixing 18-4-88 for appearance of the union or the workman. In the notice issued by this Tribunal the management submitted its written statement by post which was received on 18-3-88. However, it appears that the concerned workman appeared on 2-6-88 and prayed for time. His prayer was allowed and 19-3-88 was fixed for filing written statement by workman. On the date fixed none of the parties arrayed appeared and in the circumstances 18-8-88 was fixed for filing written statement by the workman. On the date fixed Sri J. D. Lal, Advocate, appeared on behalf of the union with a letter of authority and on his prayer 16-9-88 was fixed for filing written statement by the union/workman. On the date fixed Sri Lal appeared and verbally prayed for time which was granted and 17-10-88 was fixed for filing written statement. On 17-10-88, 28-11-88, 23-12-88 and 24-1-89 adjournments were granted on the prayer of Sri J. D. Lal for filing written statement. The case was fixed on 1-3-89 for filing written statement by the union/workman as a last chance. On the date fixed none appeared for either parties and by way of last chance 5-4-89 was fixed for filing written statement by the workman or union. But on 5-4-89 none of the appeared.

4. The case of the management as appearing from the written statement submitted, details apart, is as follows :

The reference is bad in law. The conditions of service of the concerned workman Govind Sahay are governed under the provisions of certified Standing Orders of Kiriburu Iron Ore Mines, (for the sake of brevity hereinafter mentioned as KIOM). The concerned workman was found guilty of offence under clause 48 (xxxiii) of the certified Standing Orders of KIOM and was dismissed from service with effect from 13-12-67. Subsequently on a request made by N.N.D.C. Mines Worker's Union, the concerned workman was appointed on 22-6-68. But another union operating in KIOM, namely, Jharkhand Mazdoor Sangh took up the issue for allowing him continuity of service after a lapse of ten years in 1978. The workman also submitted an application requesting for condonation of break in service and gave undertaking that he would not claim any monetary benefit. Pursuant to the offer made by the workman that his break of service may be condoned on the undertaking that he would not claim any monetary benefits for the above period, the management by Office Order dated 19-8-78 condoned the break of service of the concerned workman subject to the condition that he would not be entitled to any monetary benefit for the above period. In the circumstances, he is not entitled to any relief for the period 13-12-67 to 21-6-68 either by way of back wages or seniority in service, more so, because during this period many persons have been appointed and giving seniority to the concerned workman will lead to industrial unrest. In the circumstances, the management has prayed that the demand of the workman for seniority in service is not justified.

5. It appears from the written statement of the management and also from the terms of reference that the concerned workman was dismissed from service with effect from 13-12-67 and that he was taken back in employment on 22-6-68. The management has asserted that this is a fresh appointment and that although his break in service was condoned he is not entitled to any monetary benefit or other benefit. The concerned workman appeared before this Tribunal after issuance of notice on several dates. The union raising the dispute also appeared through Advocate Sri J. D. Lal, but neither the concerned workman nor the sponsoring union did take any effective step to file written statement in support of the claim for restoration of seniority in service of the concerned workman. This being the position, I am constrained to hold that neither the sponsoring union nor the concerned workman is interested in proceeding with the present reference. Hence, the Tribunal has got no other alternative than to pass 'no dispute award' and I accordingly do so.

This is my award.

S. K. MITRA, Presiding Officer
[No. I-26012/3/3/86-D. III(B)]

नई दिल्ली, 10 मई, 1979

का. आ. 1239.—औद्योगिक विवाद अधिनियम, 1947 (1947 क 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पादारीय पोर्ट ट्रस्ट, पादारीय के प्रबंधन से सम्बद्ध नियोजकों और उनको कर्मचारियों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

New Delhi, the 10th May, 1989.

S.O. 1239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management

of Paradip Port Trust, Paradip and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR

Industrial Dispute case No. 2 of 1983 (Central)

Dated, Bhubaneswar, the 15th day of April, 1989

BETWEEN

The Management of M/s. Paradip Port Trust, Paradip.
.....First Party-Management

AND

Their workman Sri Bhagaban Bhoi,
S/o, Dhruva Charan Bhoi,
Vill : Sirilo Nuagaon,
P. S. Kishornagar, Dist : Cuttack.

.....Second Party-workman.

APPEARANCES :

Sri S. B. Nanda, Advocate.....For the first party-management.

Sri A. C. Mohanty, Advocate..For the second party-workman.

AWARD

The Government of India in the Ministry of Labour Department, in exercise of the powers conferred upon by Section 7A, and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute vide their Order No. L-38012(3)/82-D.IV(A) dated January, 1983 for adjudication :

"Whether the action of the management of Paradip Port Trust, Paradip in terminating the services of Shri Bhagaban Bhoi, Operator, Grade-III with effect from 10-9-1976 is justified ? If not, to what relief is the concerned workman entitled ?"

2. This case is advanced to to-day on a joint petition filed by both parties. The petition for compromise filed by both parties today seeking disposal of the reference on compromise is put-up. The second party-workman and the representative of the First Party-Management submitted that they have compromised the dispute out of court in the interest of industrial peace and harmony and prayed to pass an award in terms of the compromise. The petition for compromise is read over to the workman, who is present and he admits the contents thereof to be correct. The dispute which was referred for adjudication by this Tribunal is disposed of in terms of the compromise. Hence, I pass this award in terms of the compromise. The petition for compromise do form part of the award.

Dictated & Corrected by me.

S. K. MISRA, Presiding Officer,
Dt. 15-4-89.

[No. L-38012(3)/82-D.IV(A)/D.III(B)]
V. K. SHARMA, Desk Officer

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

Industrial Dispute Case No. 2/83 (Central)

BETWEEN :

The Management of Paradip Port Trust...First Party.

AND

Sri Bhagaban Bhoi, workman—Second Party.

In the matter of :

A joint petition of compromise of the industrial dispute.

The humble petition of the parties above named,

Most Respectfully Sheweth:—

That in this case the following industrial dispute is pending adjudication:—

“Whether the action of the management of Paradip Port Trust, Paradip in termination the services of Sri Bhagaban Bhoi, Operator Gr. III with effect from 10-9-1976 is justified ? If not, to what relief is the concerned workman entitled ?”

2. That the parties since quite some time have been having sincere mutual talks to amicably and fairly settle the matter instead of waiting for the results of the litigation which is uncertain and may not satisfy both the parties. With the aid and assistance of their respective counsels, the parties have now in their mutual interest and with their free volition have come to compose the above industrial dispute and all matters incidental thereto and connected therewith on the terms as here-in-after set out :—

- (i) The first party agrees to reinstate the second party Sri Bhagaban Bhoi as Operator, Grade-III, i.e. the post he was holding on the date of his termination.
- (ii) On reinstatement, Sri Bhoi shall be placed in the said post of Operator, Grade-III at the stage in the scale of pay which he would have in normal course received on the date of such reinstatement had he not been discharged from service. The period of his non-employment will be treated a leave without pay, but shall be counted towards his seniority for purpose of his future promotion and shall also be reckoned for computation of his retiral benefits.
- (iii) Since Sri Bhoi had been discharged during his probation period, he will be deemed to have been confirmed on his reinstatement in the post of Operator, Grade-III.
- (iv) In consideration of Sri Bhoi's prolonged unemployment, the management on humanitarian consideration agrees to pay Sri Bhoi a lump sum exgratia amount of Rs. 40,000 (Rupees forty thousand only).
- (v) The first party agrees to accept Sri Bhoi's educational qualification as 'reading in ninth class' when he left School and his date of birth as '21-4-1942' as final.
- (vi) Sri Bhoi shall have no other or further claim or demand or dispute against the first party in the matter of this industrial dispute or in any matter connected therewith or incidental thereto.
- (vii) To facilitate the first party to make necessary arrangement for his joining, Sri Bhoi shall report to duty after 22-4-89 and in no case after 20-5-89 where after Sri Bhoi shall forfeit his right to reinstatement.

3. That both parties having understood and accepted the above terms as fair and in their mutual interest, and in terms of the above compromise the first party having paid and Sri Bhoi, the second party, having received today a sum of Rs. 40,000 comprising of Rs. 30,000 by bank draft No. 076731/3266/AB dated 6-2-89 and Rs. 10,000 in cash, the parties have no other or further cause to continue this case.

PRAYER

Both parties in the circumstances jointly and severally pray that the above compromise may be recorded and an award in terms thereof may kindly be passed.

And for such act of kindness, the parties, as duty bound, shall ever pray.

By the first party
through
Advocate.

BHAGABAN BHOI,

(Second Party)

A. C. Mohanty

(Advocate for second party)

Dated, Bhubaneswar

the 15th April, 1989.

नई दिल्ली, 11 मई, 1989

का. आ. 1240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेसे कल्याणपुर लाईम एण्ड सीमेंट वर्क्स लि., बंजारी (रोहतास), के प्रबन्धतांत्र से सम्बन्धित विवादों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-5-89 को प्राप्त हुआ था।

New Delhi, the 11th May, 1989

S.O. 1540.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No 1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Messers Kalyanpur Lime and Cement Works Ltd., Banjari (Rohtas) and their workman, which was received by the Central Government on the 4-5-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1) (d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 62 OF 1983

PARTIES :

Employers in relation to the management of
M/s Kalyanpur Lime and Cement Works
Ltd., Banjari (Rohtas).

AND

Their Workman.

PRESENT :

Shri S. K. Mitra.

Presiding Officer.

APPEARANCES :

For the Employers :—Shri G. Prasad, Advocate and Sri J. P. Singh, Advocate.

For the Workman:—Sri S. Bose, Secretary,
R. C. M. S.

STATE.—Bihar. INDUSTRY.—Lime Stone.

Dated, the 20th April, 1989

AWARD

By Order No. L-29012/36/83-D.III(B), dated the 1st September, 1983, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Messers Kalyanpur Lime and Cement Works Ltd., P. O. Banjari (Rohtas) in terminating services of Sri Noor Md., Blaster, with effect from 17-2-82 is justified in view of his date of birth having recorded in the Blaster's certificate as 11-2-1937 ? If not, to what relief the said workman is entitled and from what date?"

2. The case of management of M/s. Kalyanpur Lime and Cement Works Ltd., Dist. Rohtas, as appearing from the written statement submitted, details apart, is as follows :

3. There exists no industrial dispute as the concerned person, Sri Noor Mohamad Mia, had not made any demand on his employer complaining about dismissal of service wrongfully. His letter to the Asstt. Labour Commissioner(C), Patna indicates that he stated about wrongful termination of service by his employer, but did not demand any relief from them. He only made a request to the Asstt. Labour Commissioner to use his good offices to secure employment for his son in his place. Since there is no existence of industrial dispute, the present reference is bad in law and on facts.

Sri Noor Mohamad was appointed in the quarries of the employers in 1958 and his age was recorded as 40 years as on the date of his appointment in the employers' record. The date of superannuation is 60 years and so on 30-11-78 the management wrote him a letter informing him that he would be superannuated from service w.e.f. 1-1-1979. He and his trade union, the Kamavurange Quarries Labour Union, registered and recognised by the management, raised a dispute with the management challenging its action in superannuating him from 1-1-1979 on the ground that his Blaster's Certificate had recorded his date of birth as 11-2-1937 and therefore he was prematurely superannuated and demanded reinstatement and continuity of his service till 11-2-1997. The management having refused to concede the demand of the union maintaining that date of birth was 1918 and not 11-2-1937, the union referred the dispute to the Asstt. Labour Commissioner(C), Patna for intervention.

4. The Asstt. Labour Commissioner took the dispute in conciliation on 15/16-2-79. On that date both the parties attended the conciliation proceedings. The union then did not press its case that the date of birth of Sri Noor Md. Mia was 11-2-1937 and acquiesced in the company's record relating to his age. The conciliation proceeding then ripened into tripartite memorandum of settlement signed by the union representatives, the representatives of the management and the Asstt. Labour Commissioner. In terms of the said settlement the union accepted the fact of Sri Noor Md.'s superannuation from service with effect from 1-1-79 and thus accepted that the date of his birth was 1918. It was further agreed as a gesture of good will that the management should offer employment and the union would accept the offer to employ him as a fresh

employee in service for three years from 17-2-79 till 16-2-82. It was further agreed that the management would pay him all the dues and the union accepted that Sri Noor Md. would accept all his dues including gratuity and join his fresh employment on 17-2-79 in terms of the settlement, the management duly implemented the settlement and reported the same to the Asstt. Labour Commissioner. It was finally agreed between the parties that the settlement resolved all disputes between the parties and that the union had no further disputes with the employers in respect of his superannuation. This settlement is binding on the management as well as on the union and Sri Noor Md., who availed of all the benefits arising out of the settlement. He had ceased to be a workman as defined in Section 2(s) of the Industrial Disputes Act since he had not raised any industrial dispute against termination of service from 17-2-82. In the circumstances it is prayed that the instant reference be answered in favour of the management.

5. The case of the concerned workman, as appearing from the written statement filed, bereft of details is as follows :

6. Sri Noor Md. joined the services of the management on 4-8-48. At the time of his joining the service the management did not ask him to declare his age nor was any age record given to him by the management for verification. He was required to perform the duties of Blaster in the quarry of Lime Stone of the management; it is incumbent upon the management to engage persons having Blasters Certificate of Competency. At the instance of the management he appeared in the examination held under the authority of the Board of Mining Examination of the Central Government on 14-11-1967 and he having passed the examination was granted a Blaster's Certificate issued by the Secretary, Board of Mining Examination dated 10-12-1967. During the said examination the candidate were required to submit medical certificate regarding their respective age and physical fitness. He submitted proper medical certificate and his date of birth was recorded as 11-2-1937 on the Blaster's Certificate. This certificate was kept in the custody of the management during the period of his employment and at no material time the management challenged its genuineness or otherwise, specially with regard to his date of birth. The certificate in question is a statutory one and once the same is issued it cannot be challenged by anybody. He also appeared in the examination held by the certifying authority on 23-3-73 when the question of his correct age in the Blasters Certificate was not questioned by the authority nor did the management point out an discrepancy therein. The action of the management in declaring his date of birth at variance with his age as recorded in the Blaster's Certificate is arbitrary, illegal and mala fide. He himself and his trade union protested against the illegal action of the management, and after due conciliation proceedings he was allowed to resume his normal duties as Blaster in the quarry till his services were again illegally terminated by the management with effect from 17-2-62. The action of the management tantamounts to illegal retrenchment without com-

plying the statutory rules and formalities. In the circumstances he has prayed that he is entitled to be reinstated in service with full back wages.

7. In rejoinder to the written statement of the workman the management has asserted that Sri Noor Md. was appointed in the service of the management on 4-8-58 as a Mazdoor and not on 4-8-48 as claimed by him. His age was recorded in the management's statutory B Form register as 40 years as on the date of his appointment on 4-8-58 and that he put his signature on the register in acknowledgment of the age as recorded in the B Form register. As a matter of fact he has put his signature in more than one statutory registers even after he had obtained his Blaster's Certificate. B Form register of 1975 contains his signature against the entry of age of 57 years as on 1975 which shows that he was 40 years old when he was first appointed as a Mazdoor in the quarry on 4-8-58. Similarly when he was re-employed as a fresh employee in February, 1979 in terms of the conciliation settlement dated 16-2-79, he acknowledged in the B Form register for 1979 under his signature that his age as in February, 1979 was 61 years. The management has no knowledge about what transpired between him and the Department of Mines. He himself admitted his age to be 40 years as on 4-8-58 when he was first appointed. The union he belonged to gave up its stand during conciliation proceedings of 16-2-79 that his date of birth was 11-2-1937 and accepted the correctness of his superannuation as from 1-1-1979. He is bound by the said admission of his union made in the course of conciliation proceedings. He is stopped from re-agitating the issue of his date of birth in the present proceeding. The termination of his fresh service in terms of the memorandum of settlement is neither arbitrary or illegal and it does not amount to retrenchment. It has been alleged that the A.L.C.(C), Patna was not justified in referring the matter to the appropriate government for adjudication by the Tribunal since the letter of Sri Noor Md. to him does not spell out any industrial dispute but a request to him to exercise his good offices to secure employment for his son in his place.

8. In the rejoinder to the written statement of the management the concerned workman has disputed and denied the contentions of the management and asserted that there exists an industrial dispute between him and the management which falls for adjudication by this Tribunal.

9. The management in order to prove its case has examined three witnesses namely MW-1 Shraavan Kumar Mishra, Timekeeper, MW-2 Radhakrishna Srivastava, Asstt. Head Timekeeper and MW-3 M. Hasan, Sr. Personal Officer and laid in evidence a sheaf of document which have been marked Exts. M-1 to M-24. On the other hand, the concerned workman has examined himself only and laid in evidence a mass of document which have been marked Exts. W-1 to W-8.

10. The written statement of the concerned workman discloses that he was appointed by the

management of M/s. Kalyanpur Lime and Cement Works Ltd., Dist. Rohtas on 4-8-48. The management has hotly disputed this position and asserted that he was appointed by the management for the first time on 4-3-58 as a Mazdoor. The concerned workman himself admitted in his testimony that he started working for M/s. Kalyanpur Lime & Cement Works Ltd., Quarry Section in 1958 as a General Bazdoor. The statutory B Form register which bears the signature of the concerned workman is also indicative of the fact that he joined the company on 4-8-58. This being the position, his claim that he joined the services of the management on 4-4-48 melts in the thin air and the position remains that he was appointed by the management on 4-8-58 as General Mazdoor in the Quarry Section of M/s. Kalyanpur Lime & Cement Works Ltd.

11. It is the firm case of the management that the concerned workman was 40 years old when he joined the service of the company on 4-8-58. It is the irrefragable position that as per the rules of the company employees reach the superannuation age on attaining 60 years. It appears that the management issued notice to the concerned workman informing him that he would attain the age of superannuation on 31-12-1978 and that he would retire from service with effect from 1-1-79 (Ext. W-1 Ext. M-1). Kamayurang Quarries Labour Union, the only union, as transpires from evidence, operating in the mine of the management disputed the age of the concerned workman as recorded by the Company (Ext. H-2). It is the undisputed position that over the superannuation of the concerned workman with effect from 1-1-79 an industrial dispute was raised by the aforesaid union and ultimately the matter was amicably resolved between the management on the one hand and the union represented by its President and General Secretary and four others on the other by a settlement dated 15/16-2-79 in conciliation proceedings (Ext. M-3). The terms of settlement are gleaned herein below :

(1) It is agreed between the parties that Sri Noor Mohammed Mian, Blaster, BF No. 108 stands superannuated with effect from 1st January, 1979 and shall be paid off legal dues to which he is entitled under the existing law.

(2) It is agreed that the management shall re-employ Sri Noor Mohammed Mian on the post of Blaster as a fresh employee with effect from 17-2-1979 on the last pay drawn by him before superannuation and under the existing terms and conditions of service of the company. He shall be entitled to all consequential benefits and fringe benefits available to a fresh employee as on 17-2-79.

(3) It is agreed that the employment of Sri Noor Mohammed Mian shall be for a period of three years from the date of his fresh employment.

(4) It is agreed that Sri Noor Mohammed Mian shall be paid one and half months salary in lump sum, as ex-gratia, after the expiry of his fresh employment of three years in lieu of his three year's

service over and above all legal dues to which he might be entitled on the date of termination of his fresh employment in accordance with this settlement.

(5) It is agreed that this resolves the dispute finally and no further claims shall be made.

(6) Both the parties agree to send the implementation report of this settlement to the Asstt. Labour Commissioner (C), Patna within a period of 15 days from the date of this settlement.

12. It is evident from the terms of settlement that the concerned workman was to be re-employed for a further period of three years from the date of his fresh employment and he would be paid one and half months salary as ex-gratia after expiry of his fresh employment of three years and that he would be re-employed as a fresh employee with effect from 17-2-79 on the last pay drawn by him before superannuation. The terms of settlement also envisaged payment of all legal dues to him to which he was entitled under the existing law. It appears that the management reported re-employment of the concerned workman to the A.I.C. (C, Patna (Ext. M-4) and paid him his all legal dues, that is gratuity (Ext. M-11 to M-13) and Provident Fund amount (Ext. M-15 and 15.1). All this evidence are indicative of the fact that the settlement arrived at in conciliation proceedings between the management and the union was fully implemented and acted upon.

13. Upon completion of three years fresh employment as envisaged in the settlement the company informed the concerned workman that he would be relieved from duty w.e.f. 18-2-82 (Ext. M-5). It appears that the concerned workman over the issue of termination of his employment complained to the Asstt. Labour Commissioner to exercise his good office to secure employment for his son (Ext. M-6). The Asstt. Labour Commissioner intervened in the matter and give notice to the management and the concerned workman for holding conciliation (Ext. M-7). The management submitted written reply denying the claim of the concerned workman and relying on the settlement and the order of the 2nd Court of Munsif, Sasaram in the matter of temporary injunction arising out of Title Suit No. 105 of 1981. It is the admitted position that the conciliation proceeding ended in a failure and thereafter the appropriate government was pleased to refer the present dispute for adjudication by this Tribunal.

14. Admittedly the concerned workman joined the services of the company as a General Mazdoor on 4-8-58. His evidence discloses that at first he worked in the Quarry as General Mazdoor and after six years of his service he started working as Helper to the Blaster. Ultimately he passed Blaster's Examination in 1967 and was granted Blaster's Certificate of Competency by the competent authority on 10-12-67 (Ext. W-7). It is an undeniable position that the management posted him as Blaster after his passing the Blaster's Examination. In the document, Blaster's Certificate of Competency, it is stated that he was born on 11-2-1937. The

age as recorded on this certificate was presumably, done on the basis of certificate issued by Dr. Bhagwan Sahay dated 11-2-66 stating his age to be 29 years (Ext. W-8). The union while raising the industrial dispute in January, 1979 which was resolved amicably by settlement dated 15/16-2-79, relied on the Blaster Certificate of Competency in the matter of age of the concerned workman (Ext. M-16). It appears from the settlement that the union ultimately did not press the point and the dispute was settled on the terms as stated hereinbefore.

15. It appears from the Blaster's Certificate of Competency that the competent authority, upon being satisfied with regard to the evidence of age medical fitness, good conduct, literacy and experience and also of his having passed the oral examination issued the certificate to him. I have already stated that the Certificate of Competency evidences the fact that he was born on 11-2-37. I have already pointed out that the age of the concerned workman was presumably based on the Certificate issued by Dr. Bhagwan Sahay on 11-2-66 stating that he was aged 29 years both by physical examination and by appearance Ext. W-8. But the Doctor has failed to provide the data on the basis of which he was satisfied that the concerned workman was aged 29 years on 11-2-66.

4. Sri S. Bose, authorised representative of the concerned workman has contended that Blaster's Certificate of Competency is a statutory document and it should be relied upon in the matter of determination of age of the concerned workman. But Regulation 18(2) of Metalliferous Mines Regulations, 1961 does not contain any provision for recording of the age of the person admitted as a candidate at any examination for a Blaster's Certificate; all that the provision lays stress upon is the practical experience and training of a candidate in a Metalliferous mine for a certain period. That being so, although Blaster's Certificate of Competency is a statutory document, it has little force to sustain it in so far as the age of a person appearing in Blaster's Examination is concerned.

16. Sri Bose has further contended with reference to evidence that this certificate, that is Blaster's Certificate of Competency in respect of the concerned workman was all along in the custody of the management and so the management was tainted with the knowledge about the age of the concerned workman as recorded in this certificate. The management even if it is assumed that it has knowledge of the age of the concerned workman as recorded in this certificate, was under no obligation to consider the age as recorded therein for the simple reason that the age so recorded therein has no statutory force. That apart, the workman concerned himself has not pressed his case for recording the age on the basis of Blaster's Certificate to the management. The statutory B Form registers Ext. M-8 & M-9 evince that the concerned workman put his signatures thereon. It can be reasonably concluded that he was also tainted with the knowledge about the entries made in the statutory B Form registers including his age as recorded there.

17. Sri Bose has urged before me that the statutory B Form registers produced by the management are not contemporaneous documents. The management has submitted two B form registers—one of 1975 (Ext. W-8) and the other of 1979 (Ext. W-9). It has not been suggested that these B Form registers are manufactured or otherwise unreliable. It is the firm case of the management that the concerned workman was drafted into service of the company in 1958 and his age was recorded in the employers record as on the date of his appointment i.e. on 4-8-58. In his rejoinder to the written statement of the management the concerned workman has not specifically disputed this position; all that he has stated are that statements made by the management are self contradictory. There is nothing in the statement of the management (paragraph 9 of the written statement) which may be considered self contradictory. In the B Form register of 1975 the age of the concerned workman has been recorded as 57 years and that of the year 1979 61 years. The age as recorded in these registers, by arithmetical calculation comes to 40 years on the date of his appointment in 1968. Hence it can be concluded that the age of the concerned workman as recorded in these registers is not at variance with the case of the management that the concerned workman was aged 40 years on the date of his appointment; on the contrary it agrees with and sustains the case of the management. The concerned workman has admitted in his evidence that when he entered the service of the management all his relevant particulars were recorded in B form register.

18. B Form register is a statutory document with regard to the age and other particulars of any workman recorded therein. Hence the age recorded therein shall be deemed to be correct unless proved otherwise. The age of the concerned workman as recorded in the Blaster's Certificate of Competency has got no statutory force and so this cannot prevail over the age of the concerned workman as recorded in the B Form Registers.

19. Besides, it appears that the union representing the concerned workman did not press for accepting his age as recorded in the Blaster's Certificate of Competency. The concerned workman has feigned ignorance about what transpired in conciliation proceedings in his evidence. But the position is not disputes that the union represented his case at the conciliation before the Conciliation Officer. Rule 37 of the Industrial Disputes (Central) Rules, 1957 envisages that a party appearing by a representative shall be bound by the acts of the representative. The union representative represented the concerned workman in the conciliation proceedings and hence he cannot now shie away from the settlement arrived at between the management on one hand and the union on the other. Besides he has, it appears received all the benefits under the settlement. That being so he cannot now turn back and throw the settlement overboard.

20. Sri J. P. Singh, Learned Advocate for the management has contended that no industrial dispute

has been raised by the concerned workman over the issue of termination of his service since he did not make any demand on the management. It appears that his services automatically came to an end on the expiry of three years and in the circumstances he complained to the A.L.C. (C) Patna that the management had wrongfully terminated his service, and in despair solicited for exercise of good offices of the A.L.C. for securing employment of his son in his place. The A.L.C. (C). Patna thought it a fit case for industrial dispute and accordingly referred to the appropriate government for a reference. In the context of these facts and circumstances, I consider that there existed an industrial dispute between the management and the concerned workman and that the demand on the management by the concerned workman for reinstatement in service would have been an empty formality.

21. Another point that was urged by Sri Singh is that the present dispute is hit by the principles of res judicata since the concerned workman was refused injunction by the Munsif Court at Sasaram. This contention is as porous as a leaky boat, as there is nothing in evidence to indicate that the matter directly and substantially in issue in the present industrial dispute was directly and substantially in issue in the case before Munsif at Sasaram and that the case was finally heard and disposed of by the Munsif. So the plea of res judicata as contended by Sri Singh founder on the ground.

22. Accordingly the following award is rendered the action of the management of M/s. Kalyanpur Lime and Cement Works Ltd. P. O. Banjari (Rohtas) in terminating the service of Sri Noor Mohd., Blaster with effect from 17-2-82 is justified even in view of the date of birth having been recorded in the Blaster's Certificate as 11-2-1937.

In the circumstances of the case I award no costs.

S. K. MITRA, Presenting Officer.

[No. L-29012/36/83-D.III(B)]

V. K. SHARMA, Desk Officer

नई दिल्ली, 8 मई, 1989

का. आ. 1241:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मेसर्स जगधत्री कोक मैनुफैक्चरर्स के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पचाद को प्रकाशित करने हे।

New Delhi, the 8th May, 1989

S.O. 1241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Messrs Jagdhatri Coke Manufacturers and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 20 of 1988

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of M/s. Jagdhari Coke Manufacturers, P.O. Gobindpur, Dist. Dhanbad and their workman.

APPEARANCES :

On behalf of the workmen—Shri B. K. Ghosh, Member-Executive Committee Janta Mazdoor Sangh.
On behalf of the employers—Shri B. Joshi Advocate.

STATE : Bihar.

INDUSTRY : Coke.

Dhanbad, the 12th April, 1989

AWARD

The Govt. of India, Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to the then Central Govt. Industrial Tribunal No. 3, Dhanbad vide Ministry's Order No. L-20012(117)/84-D.III(A), dated the 30th May, 1984. But subsequently vide Ministry's Order No. S-11025/7/87-D.IV(B) dt. 31-12-87 the said dispute was transferred to this Tribunal.

SCHEDULE

"Whether the demand of Janta Mazdoor Sangh that the management of Jagdhari Coke Manufacturers, P.O. Gobindpur, Dist. Dhanbad should reinstate in their service the workmen named in the Annexure below whose service were stated to have been terminated from 25-8-1982 on account of closure of the Plant of the management, is justified? If so, to what relief are these workmen entitled and from what date?"

ANNEXURE

List of the workmen

1. Srimati Fulmani Marandi.
2. Sri Jageshar Bhuiya.
3. Sri Kanhai Mahato.
4. Sri Deoki Mahto.
5. Sri Ishwar Mahto.
6. Sri Jaggu Bhuiya.
7. Sri Shyamlal Mahto.
8. Sri Sita Bhuiya.
9. Sri Ramdas Bhuiya.
10. Sri Rameshwar Bhuiya.
11. Sri Kesho Bhuiya.
12. Sri Baiju Mahto.
13. Sri Panchu Bhuiya.
14. Sri Gopal Chauhan.
15. Sri Deonandan Mahto.
16. Sri Binod Bhuiya.
17. Sri Ramdeo Bhuiya.
18. Sri Rameshwar Yadav.
19. Sri Govind Bhuiya.
20. Sri Jharilal Mahto.
21. Sri Ruplal Mahto.
22. Sri Lali Saw.
23. Sri Lakhan Prajapati.
24. Sri Hulsa Saw.
25. Sri Arjun Bhuiya.
26. Sri Shankar Manjhi.
27. Sri Kali Tudoo.
28. Smt. Maiku Majhion.
29. Sri Khirao Saw.

30. Sri Nemchand Mahto.

31. Sri Rasonuni Besra.

32. Sri Sitaram Bhuiya.

33. Sri Kunjlal Saw.

34. Sri Amrika Mahto.

Both the parties filed their W.S. and rejoinders and the case was set for hearing. In spite of notice given to the union representing the concerned workmen no step was taken although Shri B. K. Ghosh appeared in the case for the Janta Mazdoor Sangh which had sponsored the industrial dispute.

On 15-3-85 Shri B. K. Ghosh representing the workmen filed a petition that as the concerned workmen appeared to be no longer interested in the dispute, the union of the workmen is not in a position to pursue the dispute. He prayed that the matter may be disposed off accordingly. In view of the fact that the union of the workmen are not taking to necessary steps for hearing the case and the union has itself filed a petition to dispose off the reference I see no reason unnecessarily to adjourn this case. It will appear from the schedule to the order of reference that it was for the Janta Mazdoor Sangh sponsoring the industrial dispute, to establish its demand and as no evidence has been adduced on their behalf I hold that the demand of workmen that the management of Jagadhatri Coke Manufacturers P.O. Govindpur, District Dhanbad should reinstate the concerned 34 workmen in service is not justified and consequently the concerned workmen are entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer,

[No. L-20012(117)/84-D.III(A)/IR(Coal-I)]

का. धा. 1242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, नैसर्गिक कोयला कोल लि. के प्रबंधन से सम्बद्ध विवादों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं 2) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-89 को प्राप्त हुआ था।

S.O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Management of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 1-5-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 190 of 1986

In the matter of an industrial dispute under section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Koyla Bhawan, Koyla Nagar of Messrs. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of Jharkhand Colliery Mazdoor Union—Shri J. D. Lall, Advocate.

On behalf of Colliery Karamchari Sangh—Shri R. P. Singh, Working President, Colliery Karamchari Sangh.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 24th April, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(387)/85-D.-III(A), dated the 26th May, 1986.

SCHEDULE

“Whether the demand for regularisation of the Cleaning Mazdoors/Sweepers, whose names are given below, by the management of Koyla Bhawan, Koyla Nagar of Messrs Bharat Coking Coal Limited is justified? If so to what relief are these cleaning mazdoors/Sweepers entitled?”

ANNEXURE

Sl. Name

1. Shri Manik Hari.
2. Shri Rajendra Hari.
3. Shri Bhola Hari
4. Shri Anand Hari
5. Shri Sudan Hari
6. Shri Mohan Das.
7. Shri Anil Das
8. Shri Prayag Das
9. Shri Haradhan Hari
10. Shri Kanchan Hari
11. Shri Khedan Mandal (Hari)
12. Shri Md. Mustak.
13. Shri Muna Ram
14. Shri Amulya Ram Mandal.
15. Shri Raghu Das
16. Shri Subhas Kahar
17. Shri Ram Chandra Ram
18. Shri Ram Sakal
19. Shri Munilal
20. Shri Madhusudan
21. Shri Shiv Mandal
22. Shri Santosh Raj
23. Shri Santi Ram
24. Smt. Panwa
25. Smt. Gita Balmiki
26. Shri Janki Ram
27. Smt. Rajgumari
28. Shri Yusuf Ansari
29. Shri Idrish Ansari
30. Shri Sukhdeo Thakur
31. Shri Jatan Das
32. Shri Taiyub Ansari
33. Shri Kabindra Pandey
34. Shri Jagdish Rabidas
35. Shri Sankar Rabidas
36. Shri Prasadi Rabidas
37. Shri Moinuddin Ansari

38. Shri Ramkar Yadav
39. Shri Jivlal Das
40. Shri Mahabir Das
41. Shri Jagdish Das
42. Shri Dilo Das
43. Shri Tiflek Das
44. Shri Ramesh Das
45. Shri Gulakh Ansari (Gultan)
46. Shri Yumush Ansari
47. Shri Shiv Shankar Mitra
48. Shri Kajal Chatterjee
49. Shri Chhotu Yadav
50. Shri Ramdeo Das.
51. Shri Ghanshyam Das
52. Shri Maksudan Das
53. Shri Manik Roy
54. Shri Ramji Sao.
55. Shri Rabi Gorai
56. Shri Bimal Singh
57. Shri Shankar Mandal
58. Shri Lalit Paswan
59. Shrimati Asha Balmiki
60. Shri Binod Hari
61. Shri Kalachand Mahato
62. Shri Jogi Das.
63. Shri Anil Roy
64. Shri Hari Nath Jha
65. Shri Sarju Das
66. Shri Kalyan Kumar
67. Shri Dhanneshwar Das
68. Shri Suraj Prasad (Suresh)
69. Shri Jawahar Mishra
70. Shri Sanjay Ram
71. Shri Hira Lal
72. Shri Birendra Singh
73. Shri Gour Das
74. Shri Anand Bouri
75. Shri Arun Bouri
76. Shri Bachan Bauri
77. Shri Deokumar Bauri
78. Shri Sunil Bauri
79. Shri Sailendra Bouri
80. Shri Kunti Harin

The main written statement has been filed on behalf of the workmen by the Zonal General Secretary of Jharkhand Colliery Mazdoor Union. Besides that W. S. have been filed by the Working President of Colliery Karamchari Sangh on behalf of the concerned workmen Sukhdeo Thakur, Shri Bimal Pd. Singh, Shri Harinath Jha and Shri Kalyan Kumar and Sheo Mandal. The case of the workmen in short is that they were engaged as cleaning mazdoors/sweepers under some contractors since 1982 to do cleaning and various sanitation work in Koyalaganagar and its office and quarters situated in Koyala Nagar. Since then they were working regularly. Their attendance were marked by the Caretaker of the Koyalaganagar Township Shri K. D. Singh and the said Shri K. D. Singh used to deploy them as required for cleaning and sanitation work. The wages if the concerned workmen, however, were paid through the contractors concerned. Each of the concerned workmen had completed attendance

of more than 240 days in each calendar year since 1982 to 1984. Sometime in the year 1985 the contract system was abolished by BCCCL and a decision was taken by the management to regularise the concerned workmen working under the contractors as Sweeper and the cleaning mazdoor according to requirement. The management constituted a committee to select the workmen for their regularisation. The concerned workmen were asked to submit certificate, affidavit about their identity and caste certificate etc. The concerned workmen submitted the required papers and appeared before the Selection committee. The committee selected 33 concerned workmen belonging to scheduled caste category irrespective of their seniority and attendance put by them. The concerned workmen and their union demanded regularisation of the remaining concerned workmen as they were in fact workmen of BCCCL though treated as contractors workmen. The job of cleaning and sweeping is of permanent nature and there is sufficient requirement for absorption of all the remaining concerned workmen under BCCCL. The management has also indulged in discrimination while selecting the workmen for absorption and only workmen of the particular caste have been absorbed violating fundamental rights under Article 14, 15 and 16 of the Constitution of India. As BCCCL is a Govt. Company, it is a state and cannot violate the Articles of the fundamental rights provided in the constitution. On the above plea it is prayed on behalf of the workmen that the remaining concerned workmen who have not been regularised should be deemed to have been regularised from the same date on which some of the concerned workmen were regularised with payment of full wages and allowances till they are allowed to resume duty under the management.

The case of the management is that the present reference is not legally maintainable. The Sweeper employed either directly or through contractors at Koyala Bhawan and Koyal Nagar and other residential areas cannot be said to be employees of any mine. The present reference is outside the jurisdiction of the Tribunal. Koyala Bhawan which is the head office of the management of BCCCL was built in stages during the periods from 1978 to 1985. The Buildings at the Koyalnagar were also constructed during the said period. For the purpose of up keep and maintenance of Koyala Bhawan, Koyalnagar, ex-Coal Board Colony and Bhuli Township the requirement of Sweeper was assessed from time to time, approval for filling up vacant post was obtained, persons were called for interview and they were selected to fill up the vacant post. During the period of construction and expansion works contractors were employed from time to time for the purpose of municipal works and the contractors engaged their own workers, supervised their jobs and paid them wages. The concerned workmen were thus initially recruited by the contractors. The management called for interview of all the persons named in the list of workmen submitted by the contractors and selected the required persons out of them to fill up the sanctioned post of Sweeper. It was observed that sufficient persons influenced the contractors to include their names in the list of workmen with hope of entering into the service of the management and then to manipulate and get transferred to other jobs. The management, therefore, fixed certain criteria of selecting candidates. The criteria fixed by the management was that the candidate must produce the caste certificate that he belongs to Sweeper class. The second criteria was that he should be willing to do all types of jobs like cleaning latrines, urinals and who were ready to do all other municipal jobs. The number of attendance put by the different persons under different contractors were also taken into consideration. The contractors workmen fulfilling eligibility conditions and having put more number of days of attendance were selected after interview.

By the notesheet dated 17-10-84 Shri R. G. Singh Dy. Chief Personnel Manager put up the position of the Sweeper as regards requirement at various places and put forward the proposal for recruitment of additional sweepers. The proposal gave requirement of 71 Sweepers. The requirement was further assessed by the Addl. Chief Personnel Manager and Dy. Chief Manager and finally the number of

posts of Sweepers was sanctioned at 71. There were already 33 Sweeper on the roll of the company and 38 more Sweeper were required to be employed. The final assessment of requirement of Sweeper was accepted and necessary instructions were issued for filling up the 38 posts of Sweeper. A committee consisting of S/Shri S. J. Keshwani, Addl. C.P.M., S. N. Sinha, Personnel Manager and Shri B. N. Iha, Dy. Manager (General Administration) called 86 persons in the interview who were claiming to have worked as contractors employees. They were called for interview in the month of December, 1983 and January, 1984 for selection for employment under the management after abolition of contract system. The said selection committee submitted its report dated 9-2-84. The list of Sweeper who were on the roll of contractors in the month of April, 1985 were considered along with the report dated 9-2-84 and final selection of Sweeper to fill up the additional sanctioned posts of 38 Sweepers were made. On the basis of the final selection a notesheet dated 29-6-85 was prepared and the persons for appointment of Sweeper on casual basis was approved by the C.M.D. on 29-1-85. The workmen finally selected were kept on casual post for a period of one year and were subsequently made permanent on completion of 240 days of attendance. The total requirement of Sweeper were filled up in stages out of the contractors employees who were genuine Sweepers. One of the concerned workman at Sl. No. 30 Shri Sukhdeo Thakur has already been regularised but the rest of the concerned workmen were not selected and were never in the employment of the management at any time and as such they cannot claim regularisation under the management. The management cannot be compelled to appoint Sweeper more than the sanctioned strength of 71 Sweepers. The management followed certain basis for selecting the Sweepers to fill up the all vacant post taking into consideration the nature of job required to be performed by the Sweeper. The different contractors had submitted the list of workmen certifying them as Sweeper but in fact some of them were not Sweeper and were not suitable for the job of Sweepers. The management has denied that the concerned workmen were employed by the management in permanent nature of job of cleaning and sweeping from 1978. None of the concerned workmen were ever employed as Peon by the management. The concerned workmen Shri Sheo Mandal was not selected in the interview. He was never employed by the management as casual Sweeper or casual cleaning mazdoor and as such there was no question of working continuously under the management. His name was included in the list of casual workers of contractors and he was called for interview at the time of selection of Sweeper. The management had not appointed the concerned workmen and as such there was no question of paying less wages to them.

On the pleadings of the parties the points for determination are :—

- (1) Whether the concerned workmen were actually the employees of BCCCL though purported to be working and recruited by contractors ?
- (2) Whether the concerned workmen are entitled to be regularised as workmen of BCCCL and
- (3) Whether the reference is invalid on the ground that the concerned workmen were not the employees of any mine ?

The workmen examined 7 witnesses and the management examined one witness. The documents of the workmen are marked Ext. W-1 to W-16 and the documents of the management are marked Ext. M-1 to M-10.

Point No. 1

During the course of hearing of the case it was submitted on behalf of the workmen that out of 80 concerned workmen involved in this reference 33 concerned workmen have since been regularised and as such now the present reference concerns only 47 concerned workmen. The workmen have given a list Ext. W-14 giving the names of the 33 concerned workmen and their Sl. No. given in the schedule to the

order of reference who have admittedly been given employment by the management. Ext. W-15 is the list of the 47 concerned workmen who have not been given employment by the management. It appears from the evidence of the management that the said figure of the concerned workmen who have been given employment and those who have not been given employment are not fully correct. It will appear from the office order Ext. W-6 which has been filed by the workmen themselves that 38 concerned workmen were selected and posted as casual Sweepers. Thus now it is further the admitted case of the parties that the 38 concerned workmen named in Ext. W-6 were selected and appointed as Sweeper by the management out of the list of contractors workmen. As such the case of 42 concerned workmen remains to be considered out of the 80 concerned workmen.

Now the point for consideration is whether the said 42 concerned workmen were the workmen of the management and whether there was relationship of employer and employee between those 42 concerned workmen and the management of BCCL. In order to appreciate whether they were employees of the management or were the employees of the contractors we have to look into the evidence adduced by the parties. WW-1 Bimal Pd. Singh is one of the concerned workman. He has stated that since 15-9-82 he was working under the contractor Md. Mugni who was the contractor of BCCL. WW-1 has stated that he was working as Attendance Clerk under the said contractor but his designation was of cleaning Mazdoor. He used to mark the attendance of the casual labour and after marking the attendance he used to submit it every day before the Caretaker. He also used to maintain the monthly attendance of the casual workmen for the payment of their wages. He has admitted that the payment of wages used to be made by the contractor and the caretaker jointly on the basis of the entries in the register. He was marking Attendance of 41 workmen out of 100 casual workmen. He had appeared in the interview but was not selected for the post of Sweeper by the management. He admits that the management had selected 38 cleaning mazdoors out of the casual contractors workers. He states that he had worked for more than 240 days in a year. From his evidence in the cross-examination it will appear that WW-1 is a Matriculate. His evidence is very significant when he has stated that the workmen used to report to him for duties. He has stated that he used to mark the attendance of the workmen in a Register and thereafter he used to distribute the work and the place of work to them. He also used to go and see whether they were working at the allotted place or not. He had worked under the contractor, Md. Mugni for one year in 1982-83 till May, 1983 and then he worked under the contractors Nand Gopal Singh for about 4 to 5 months in 1984 and had worked for 2 or 3 months under the contractors Shri Dutta in 1984. He had worked as Attendance Clerk under all the above named contractors. He has stated that there was no Munshi or Manager of the contractors and he alone was supervising the work of workmen and he used to prepare the paysheet. He has stated that the contractors used to prepare the payment register in which the payment was made to the workmen by the contractors out of the bills received by him. He has further stated in his cross-examination that the contract work was stopped by the BCCL and thereafter the management of BCCL selected out of the contractors casual workers as cleaning mazdoors in which the persons belonging to Sweeper class namely, Dom, Hari etc. were first selected as cleaning mazdoor and they have to clean latrine urinals etc. He has stated that the upper caste contractors casual workers would not have worked as Sweeper for cleaning latrine and urinals. He has also stated that the persons who were selected as cleaning mazdoor were all those who were contractors workers and no outsider was given employment. Towards the end of his cross-examination he has specifically stated that he is a matriculate belonging to higher caste and as such he cannot clean the latrine and urinals and he demands clerical jobs of attendance Clerk. It will appear from his evidence that the management had not selected any contractors workers in the clerical grade in any other job except in the job of cleaning mazdoor. The evidence of WW-1 has almost given a death blow to the case of the workman that the

concerned workmen were the employees of the management of BCCL. His evidence clearly indicates that all the concerned workmen were contractors workers out of them 38 concerned workmen were selected as sweeper by the management. It will also appear from his evidence that the Attendance of the workmen was taken by him on behalf of the contractors and that the payment of wages was made by the contractor out of the bills received by him. It will also appear from his evidence that the supervision of the workmen was done by WW-1 who was himself a workman of the contractor and it does not appear from his evidence that the workmen of the contractors were working under the supervision of the management.

WW-2 Sukhdeo Thakur is another concerned workman. He has stated that Shri S. N. Singh, Sr. Administrative Officer had appointed him as sweeping/cleaning mazdoor. There is no case of the workmen that Sukhdeo Thakur had been appointed by the management. The case of the workmen, on the other hand, is that all the concerned workmen were appointed by contractors and were working through the contractors. He has further stated that he used to do work of office Peon and had produced Ext. W-10 and Ext. W-10/1. Ext. W-10 shows that Shri Sukhdeo Thakur (WW-2), was working under contractor since 1978 in Koyala Bhawan. Ext. W-10/1 shows that he was working in Koyala Bhawan in Sweeping and cleaning job. He has filed Ext. W-12 to show that he had occasionally worked as Peon for a very short period and it does not show that he was regularly working as Peon. He has also stated that he used to get his wages through the contractors and his attendance was marked by Bimal Prasad WW-1. From his cross-examination it will appear that he was not selected in the interview by the committee for the post of Sweeper. He has stated that Mugni Md. contractor used to pay the salary to him and that BCCL had given him slip for O.T. work done by him. His evidence will show that Md. Mugni contractor, under whom he worked, himself did not work continuously as contractor. He has stated that BCCL takes interview before giving employment and has asserted that BCCL had taken his interview in 1983. The explanation of the management tried to be brought out in the evidence of WW-2 is that the management of BCCL sometimes used to requisition the services of the contractors workers and for that wages were paid to him. In the facts and evidence of the case it appears that WW-2 was not regularly employed by BCCL and he was occasionally asked to do some job. WW-3 is also one of the concerned workman. He has stated that in 1979 he was appointed by the contractor for the work of BCCL. He has stated that he was working as Supervisor in the Paste control department of BCCL and also used to clean table and take letters for delivery in other offices. He has stated that the workmen had raised objection to the contractor that they were being paid very low wages whereupon the contractor told them that if they had to work they have to work on the said amount otherwise they were at liberty to go away. This evidence also shows that the concerned workmen were the actual employees of the contractors and as such they had demanded high wages from the contractor which was refused by the contractor. In cross-examination WW-3 has stated that he had worked under the contractors Mugni, Terun Banerjee and Pandey but he has no paper to show the period he had worked under them. He has stated that Md. Mugni used to give wages to them and that the attendance of the workmen was taken by the man of the contractor.

WW-4 Ram Sakal Ram is also a concerned workman. He was working in Koyala Nagar as Cleaning Mazdoor from 1980. He has stated that Koyalanagar has its own staff for sweeping and cleaning purpose. He has stated that prior to 1980 they were working under contractor but from 1980 they were directly employed by BCCL. This fact has been given a go by and it has now been submitted on behalf of the workman that the concerned workman had worked through the contractors and that they were never directly employed by BCCL. In cross-examination he has stated that appointment letters and identity cards is issued to the persons who are employed by BCCL but the concerned workman did not get any identity card or appointment letter from BCCL. He has himself admitted that he had worked under the contractor Shri Tapan Banerjee upto 1983. Thus his claim that he was

directly employed under the management after 1980 is falsified by his own evidence. According to him all the concerned workmen had worked under the contractor Shri Tapan Banerjee till 1983. Thus all the concerned workmen had worked under the contractor upto 1983, according to his evidence. He has stated in his cross-examination that the workmen were asked in the interview whether they would be cleaning the latrines and urinals. It appears therefore that the management was specifically asking each workman in the interview whether they would be cleaning the latrines, urinals etc. which was the job for which the sweepers were being engaged. WW-5 Jatan Chandra Das is also one of the concerned workman. He was working in Koyala Bhawan office since 1982 and was appointed by the contractor Md. Mugni. He has stated that in December, 1983 all the concerned workmen were interviewed for regularisation and he had appeared in the said interview along with other concerned workman but he was not selected. He had worked under only one contractor. He has stated that Shri K. D. Singh was the caretaker of the Guest House and Shri R. P. Singh was the Caretaker of Koyala Bhawan Office. He was unable to say the basis on which the interview committee selected sweepers out of the contractors labour. WW-6 is Shri K. D. Singh working in Koyala Nagar as General Supervisor in the Township since August, 1980. The sanitation of Koyalanagar Township is under his supervision. He knows the concerned workman from Sl. No. 1 to Sl. No. 73 of the annexure to the schedule of the order of reference but does not know Sl. No. 74 to 80. He has stated that he used to distribute job and the Munshi used to mark the attendance of the workmen working under him. In cross-examination he has stated that preference was given to the scheduled caste and scheduled Tribe for selection of Sweeper in BCCL. He has clearly stated that the payment of wages was made to the concerned workman by the contractor and his Munshi and he used to represent the management at the time of payment of wages to the concerned workman by the Thikadar and his Munshi. The fact that the payment of wages was made by the Thikadar and his Munshi to the concerned workmen in his presence does not mean that he was actually supervising and paying wages on behalf of the management. It only meant that WW-6 witnessed that the workmen were being paid the wages by the contractor. WW-6 has further stated that the Munshi marking the attendance of the concerned workman was an employee of the Thikadar and the Thikadar had appointed one of his workmen as Munshi. He has stated that Paste controller of Calcutta was a Thikadar under whom the concerned workman was working and that the said Thikadar did not hand over any of his register to him. The past controller was doing the sanitation work since before WW-6 had started the work of supervision with effect from 6-1-82. Thus according to his evidence also it will appear that the attendance was maintained by the contractor's man. His evidence that he was distributing the work to the concerned workmen is belied by the evidence of WW-1 who has clearly stated that he was alone supervising the work of the workmen.

From the evidence discussed above it will appear that the concerned workmen were appointed by the contractor and their wages was paid by the contractor out of the bill paid by BCCL to the contractor. The attendance of the concerned workmen were maintained by the contractor's Munshi who was himself one of the concerned workman and the work was distributed to the concerned workmen by the contractor's man and the work of the workmen were also supervised by the contractor's man. There is no doubt that the contractors were engaged to get the cleaning work done by his men but that does not mean that the concerned workmen who were appointed by the concerned contractors were the employees of the management. It will further appear from the background of the case that BCCL was having new construction and it had not yet decided about the number of permanent sweepers, which they would be requiring for the permanent set up. The engagement of contractor to do the cleaning work was for a temporary period till the final set up became clear to the management. It was for this reason that the management had got the work done through the contractors and the entire control of the workmen was under the contractor. In view of the facts evidence and circumstances of the case, I hold that the concerned workmen were contractor's workmen and there was no direct relationship of employer and employee 1263 GT/89-4

between the management and the concerned workmen. Accordingly Point No. 1 is decided against the concerned workmen.

Point No. 2

As the concerned workmen were not the workmen of BCCL they cannot claim to be regularised by BCCL. A workman can be regularised by BCCL only when he works as an employee of BCCL. In the present case we have found that the concerned workmen were contractors workmen and not the employees of the management of BCCL and as such they cannot claim to be regularised.

The management has filed photo copy of note-sheet Ext. M-1 to M-3 showing as to how the management had fixed total strength of Sweeper at 71. It will appear that already 29 sweepers were on the roll of BCCL. The management thus had 42 remaining sanctioned post to be filled up for which the management set up a committee for selection of 42 sweeper. MW-1 Shri Keshwani was the Chairman of the Committee constituted for the purpose of Selection of Sweepers. He has stated that before selection, work of sweeping etc. used to be done through contractors. Ext. M-6 is the report of the interview committee bearing his signature and the signature of Shri S. N. P. Singh, Personnel Manager and Shri B. N. Jha, Dy. Manager who were the other two members of interview committee. He has stated that the contractors had been asked to submit a list of workers whom they had engaged to work on sweeping contract and the committee called all such persons whose names were sent by the contractors. He has further stated that in the interview they specifically asked from each of the candidate who appeared before them whether they were willing to work in the sweeper job like cleaning of latrines, urinals etc. He has stated about the different lists prepared by them which form part of the report of the interview committee. He has stated that interview was purely for sweeper and cleaning job and as such they had not held interview for appointment of clerks and Munshi. He has stated that those concerned workmen out of the list submitted by them were recruited who had agreed to do all jobs of cleaning including the cleaning of latrines, urinals, safety tanks. He has stated that the committee did not discriminate in the appointment for making specific appointment for cleaning roads and offices and the other set for cleaning of urinals, safety tanks etc. In the end he has stated that selection was made on the basis of willingness and merit of the workmen. The evidence of MW-1 has remained in tact as the workmen did not cross-examine MW-1. The workmen had not specifically shown any illegality or irregularity in the selection of the Sweepers by the selection committee. The management had appointed 38 concerned workmen who had agreed to do the cleaning jobs of latrine urinals etc. and I think the management was quite competent to select only those persons who could do work of cleaning urinals and latrines required to be done by the sweeper. We have seen in the evidence of WW-1 that the higher caste concerned workmen were not ready to do the job of cleaning of urinals and latrines and some of them were demanding to be appointed as clerks and Munshi. The 38 concerned workmen selected and appointed were not actually regularised as workmen of BCCL but their selection was a fresh appointment and the management had only considered their past attendance in the cleaning work under the contractors and the willingness of the workman to do the job for which they were being appointed. The remaining concerned workmen therefore, cannot claim as a matter of right to be appointed as Sweepers as there was no sanctioned post and they were neither selected nor they were willing to do the job of cleaning of latrines and urinals which also forms part of the job of Sweepers. In the above view of the matter I hold that the concerned workmen are not entitled to be regularised or appointed as workmen of BCCL.

Point No. 3

A plea has been taken by the management that Koyala Bhawan or Koyalanagar is not a mine and as such the Central Govt. has no jurisdiction in the matter and the reference is invalid. The workmen have produced photo copy of Ext. W-16 which is a notification published in the Gazette of India declaring industry engaged in production of coal or coke as a controlled industry. Industry engaged in the production of

coal therefore will include the entire industry as such including its head office of Koyala Bhawan and Koyalanagar. I hold therefore that the Central Govt. is the appropriate Government which can refer the case to the Industrial Tribunal of the Central Govt.

In the result, I hold that the demand for regularisation of the Cleaning Mazdoors/Sweepers, whose names are given in the annexure, by the management of Koyala Bhawan, Koyla Nagar of Messrs. Bharat Coking Coal Limited, is not justified and consequently the 42 concerned workmen other than 38 workmen already appointed are entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer

[No. L-20012(387)/85-D.II(A)/IR(Coal-1)]

K. J. DYVA PRASAD, Desk Officer

मई दिल्ली 8 मई, 1989

का. भा. 1243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार यूनाइटेड बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधि-करण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 8th May, 1989

S.O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the United Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU
MADRAS

Thursday, the 23rd of March, 1989

INDUSTRIAL DISPUTE NO. 44 of 1987

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of United Bank of India Madras-4.).

BETWEEN

The workman represented by

The President,
Tamilnadu Banks Deposit Collectors Union,
55, Armenian Street, P. O. Box No. 180,
Madras-600001

AND

The Regional Manager,
United Bank of India,
59, Kutchery Road, Mylapore,
Madras-600004.

REFERENCE

Order No. L-12012/119/86-D.II(A), dt. 16-4-87 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 12th day of October, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru U. P. Shet, Authorized Representative appearing for the workmen and of Thiruvallargal N. G. R. Prasad and S. Vaidyanathan for Tvl. Row and Reddy, Advocates for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following:

This dispute between the workmen and the Management of United Bank of India, Madras-4, arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its order No. L-12012/119/86-D.II(A), dated 16-4-87 of the Ministry of Labour for adjudication of the following issue:—

“Whether the action of the management of the United Bank of India, Madras, in terminating the services of Shri Liakath Ali, Tiny Deposit Collector, United Bank of India, Oppanakara Street, Coimbatore from 11-10-1984 is legal? If not, to what relief is the workman concerned entitled?”

2. The averments in the claim statement are one Liakath Ali was selected and appointed as Commission Agent by the Respondent-Bank at Coimbatore Branch under the Tiny Savings Scheme on 7-7-1980 stipulating certain terms and conditions. As per the terms the Deposit Collector collected the deposits under Tiny Savings Account by moving door to door daily, weekly or fortnightly or monthly and after collecting the deposits he should issue printed coupons supplied by the Bank to the value of the deposit collected and collected amounts will have to be deposited with the Bank's branch on the same day or next working day along with the copy of the coupon. The appointee will be paid by the bank under the Commission of 3 per cent deposit collected during the month payable in the week of the subsequent month. He is also required to furnish 2 sureties against any claim. The workman accepted the terms and conditions for employment and was working at the Oppanakkara Street branch for the Respondent. While so the services were terminated by the Bank on 11-10-1984, the Management-Bank had issued identity card and also supplied with coupons of various denominations by the Bank to issue the same to the customers on receipt of cash. The workman should also attend the branch of the Respondent-Bank and submit all statement of collection on deposit and also should sign the statement of collection prepared by him. The petitioner states, the petitioner was the regular employee of the Bank as the Agent for collection of cash towards Tiny Deposit Savings Accounts. The designation 'Commission Agent' has no relation to the work of collecting cash at the doors of the customers of the Bank under the deposit scheme. The workman was not given regular pay scales but only a lump-sum wages as 3 per cent of the total cash collection made by him and therefore his remuneration varied with the collection of cash amounts. This commission which is nothing but the wages of the workmen, cannot fall within the meaning of 'Commission' as defined in the Banking Regulation Act, 1949. While so the service was terminated without any reasons on 11-10-1984 and that he was drawing a monthly remuneration not less than Rs. 350 at that time. The Petitioner was at the regular permanent service of the Bank with the designation as 'Commission Agent'. He performed the duty of cashier by collecting cash from the doors of the customers of the Respondent Bank as per the rules of deposit. The termination of his service amounts to retrenchment as defined under Section 2(oo) of the I. D. Act, 1947. Since the claim for reinstatement with back-wages and other compensation.

3. The Respondent in his counter states that the reference is incompetent since the petitioner was not a workman as defined under Section 2(s) of the Industrial Disputes Act. He was only a "Commission Agent" under the Tiny Savings Scheme by receiving a commission at the rate of 3 per cent on deposit collected. The order of appointment states that he is not an employee of the Bank and that he had no claim in the Bank under any circumstances. He was not required to attend the Bank nor sign the attendance register. He was not subject to the Discipline or

control of the Bank. The provisions of the Bi-partite Settlement applicable to Bank employees are not applicable to him. He was only required to deposit the collections on the same day or the next day. Issuing an identity card, will not make him a workman of the Bank. He had to only call on the Bank to deposit the collections and he was not subject to any other control. Commission Agents were engaged not only in this Bank, but in several other Banks. In Complaint No. 1/82 and I. D. 20/83 this Tribunal has held that the Tiny Deposit Collectors are not workmen under Section 10 of the Banking Regulation Act, 1949. A Banking company is prohibited from employing any person on the basis of any remuneration by way of commission. Hence the Petitioner is working as a 'Commission Agent'. The main object of the scheme was to mobilise deposits from Low Income Group and inculcate a savings habit in their minds. The working of the scheme did not produce any desirable results at the Coimbatore Branch but had only posed various problems to the Officers. The Reserve Bank also took a policy not to encourage the scheme any further. The Head Office of the Respondent also sent a circular on 1-12-1983 not to extend the Scheme to new branches. The Commission Agents demanded miscellaneous coupons with the prior signatures of the Officer in blank or higher denomination coupons of Rs. 100 to Rs. 500. The Bank while refusing the scheme, they started demonstration and shouting vulgar slogans in front of the Bank. Since there was no relationship of Master and Servant and he was purely a Commission Agent, no reason need be assigned for terminating his services. He was not a workman as defined under Section 2(s) of the I.D. Act does not arise. The provision relating to Section 2(oo) also will not apply. The reference is incompetent. Hence the claim is to be dismissed.

4. The point for determination is :

"Whether the termination of Liakath Ali, Tiny Deposit Collector is legal? If so, to what relief the workman concerned is entitled to?"

5. In this case W-1 to W-16 on the side of the workman and M-1 to M-8 on the side of the Management were marked. No oral evidence was adduced on either side.

6. The facts in this case that Liakath Ali was appointed as a Commission Agent by the Respondent-Bank at Coimbatore Branch under Tiny Deposit Saving Scheme by W-1 is not disputed. The Order of appointment W-1 containing the terms and conditions and also designation of the person as 'Commission Agent' is also not in dispute. The Petitioner filed W-6 to W-2 various relating to correspondence with the Bank like execution, surety, advertisement, failure of conciliation report, tiny savings account opening form and form of settlement of collection of deposits. While so according to the Petitioner though he has been designated as 'Commission Agent' he is a regular employee. In other words, the commission agent according to the Petitioner-Union is a workman under Industrial Disputes Act and therefore he cannot be retrenched. On the other hand the Respondent-Bank would contend that the appointment of Liakath Ali was only as a Commission Agent for limited purposes. As per the terms and conditions of order of appointment, since services were not required, he was terminated. It is also the contention of the Respondent that he is not a workman and there is no relationship of Master and Servant and therefore Section 2(oo) also would not apply. In other words, he being a Commission Agent, he can claim it any time. Now in the light of the contentions raised by the parties, the question arises whether the Petitioner was a workman as defined under Section 2(s) of the I. D. Act, 1947 so as to attract the other provisions namely Section 2(oo). In this connection, a perusal of M-1 the order of appointment letter itself would be a clinching document to decide the issue. The learned authorised representative contends that though the petitioner has been designated as a commission agent, the nature of job done by him is that of cashier, collecting cash. On that score he is an employee of the Bank. The further con-

tention is the savings scheme is a business of the Respondent-Bank for which they form Rules and Regulations. The scheme is to mop-up the deposits from the public, in particular from the poorer section of people and such deposits are invested by the Respondent-Bank and earn profits. This nature of work, according to the learned authorised representative, is that the tiny savings scheme like any other savings scheme by the Bank, is the business of the Bank and the Petitioner who was doing such business by going to depositors, collecting the amounts and coming to the bank daily and depositing the same would only amount to that the petitioner is also an employee of the Bank. In this connection, a perusal of appointment order would go a long way to dispel the contention of the Petitioner Union. In the appointment order it has been stated the applicant has been selected for being engaged as the Bank's Commission Agent under Tiny Savings Scheme with the terms and conditions mentioned therein. This order of appointment refers to 11 conditions. Condition No. 2 states "he will not be an employee of the Bank in any sense whatsoever." Condition No. 9 states, "he will be paid by the Bank, commission at the rate of 3 per cent of the desposit collected by him during the month payable in the first week of the subsequent month." Condition No. 10 relates that the period of engagement as Commission Agent will initially be for 6 months from the date of taking up the assignment and this may be renewed by the Bank on the basis of his overall performance. He will however has no claim to an appointment in the Bank, in any circumstances whatsoever. Condition No. 11 states, he will be required to furnish two sureties to the bank to stand surety for him against any claim the Bank may bear on him. These conditions according to the Management would disclose that the Petitioner has not been appointed by the Bank as an employee. A perusal of the appointment order with the above conditions would only disclose that at no time the petitioner was appointed as an employee and he has no such right in future. It is further seen that he will not be entitled to any pay or remuneration as in the case of regular employee. But he would be entitled to only 3 per cent of commission for the deposit collected by him during the month. It is not the case of the Petitioner-workman that as an agent of the Tiny Deposit Scheme has to attend the office regularly and submit vouchers, etc. and also perform any other work in the branch as directed by the Branch Manager. In the absence of any evidence on this aspect, the following conclusions can be drawn namely that there is no regular attendance for deposit collectors as regular employees; there are no fixed hours of work; there is no provision for grant of leave either casual or earned or medical, to deposit collectors. They are also not eligible for any other allowances or any pensionary gratuity benefits. Further the deposit collectors cannot be transferred from one branch to another branch. The bank has no control over activities of deposit collectors and the only obligation is to remit the collections into the bank and for that purpose they would go to the bank. In fact the Deposit Collector is paid remuneration by way of commission depending on the collections made by him. The adverse of these factors in the case of deposit collector would make him not an employee of the Bank. In fact Section 10 of the Banking Regulation Act, 1949, prohibits the banking company from employing any person whose remuneration or part of remuneration takes the form of commissions or shares in the profit of the company. The Bank is not permitted to appoint the person on the payment of commission on a contract otherwise than the regular member of the company.

7. In the face of Section 10(1)(b) of the Banking Regulation Act, 1949, it is impossible to conceive that the respondent had an intention or authority to appoint Deposit Collector as an employee of the Bank. It is seen Section 2(s) of the Industrial Disputes Act defines, "workmen in wide terms namely including apprentice, unskilled, skilled, technical operational, clerical or supervisory work for hire or reward, whether the terms of employment express or implied.....". Though it is urged by the Petitioner on the basis of the wide definition that deposit collector is a workman, it cannot be accepted, for the reason, firstly, he has been appointed only as a commission agent; secondly, he is not eligible to get benefits that would accrue to regular employees of the bank; thirdly he is not controlled by the bank; fourthly, he has no fixed time of work and he is not bound to attend the bank fixed time of work and he is not bound to attend the bank daily. He attends the bank only for the purpose of depositing

the deposits collected by him. The above facts would only lead to the irresistible conclusion that the petitioner cannot be termed as workman by any stretch of imagination. There cannot be any relationship of master and servant. It is open to the bank to terminate the agency. Since the petitioner is not a workman, the question of retrenchment also does not arise, warranting to apply Section 2(oo) of the Industrial Disputes Act, 1947.

8. For these reasons, this reference is incompetent and the termination of the services of Liakath Ali; Tiny Savings Collector, by the respondent-Branch is legal. This point is found against the Petitioner-Union.

9. In the result an award is passed justifying the action of Management and rejecting the claim of the Union. The Petitioner will not be entitled to any relief. No cost.

Dated this 23rd day of March, 1989.

K. NATARAJAN, Industrial Tribunal

WITNESSES EXAMINED :

For both sides : None.

DOCUMENTS MARKED :

For workman :

Ex. W-1/7-7-80—Order of appointment issued to Thiru Liakath Ali (Petitioner-workman) (Xerox copy).

W-2/3-9-84—Letter from Petitioner/workman to B.3 Police Station, Kattoor intimating loss of bag (xerox copy).

Ex. W-3/4-9-84—Acknowledgement of the letter W-2 by B. 3 Police Station, Kattoor (Xerox copy).

W-4/4-9-84—Letter from Petitioner-workman to the Manager, United Bank of India, Coimbatore intimating loss of bag and complaint (xerox copy).

W-5/4-9-84—Letter of the Management Bank Suspending the Petitioner-workman from service (xerox copy).

W-6/11-9-84—Receipt for having deposited the value of unsold coupon (Xerox copy).

W-7/14-9-84—Letter by Petitioner-workman to B.3 Kattoor Police Station acknowledging receipt of documents (Xerox copy).

W-8/18-9-84—Letter by Petitioner-workman to the Management-Bank intimating recovery of the bag etc. (Xerox copy).

W-9/11-10-84—Order of termination (xerox copy).

W-10/—News Paper cuttings dt. 6-9-84 and 11-10-84 (xerox copy).

W-11/14-3-86—Conciliation Failure Report (xerox copy)

W-12/—Account opening form—Specimen.

W-13/—Statement of collection—Specimen

W-14/—Specimen of Tiny Savings Scheme.

W-15/—Extract of rules given in Pass Book (xerox copy).

W16/—Extract of Tamil Rule of Tiny Savings Scheme (Xerox copy).

For Management :

Ex. M-1/6-9-84—Reply given by the Petitioner workman to the Bank's letter dt. 4-9-84 (xerox copy).

M-2/18-9-84—Letter from the Petitioner-workman to the Bank confirming that the bag was recovered (Xerox copy).

M-3/20-1-87—Xerox copy of the Award of the Central Govt. Industrial Tribunal, Jaipur in case of a Tiny Deposit Collector.

M-4/24-4-85—Xerox copy of the Award of the Central Government Industrial Tribunal, Jaipur relating to the termination of an Adarsh Agent.

M-5/26-2-86—Xerox copy of the Notification of the Central Govt. Industrial Tribunal, Kanpur, relating to the termination of a Deposit Collector.

Ex. M-6/18-1-85—Xerox copy of the Award of the Industrial Tribunal, Madras in I.D. No. 20/83 relating to the Termination of Pigny Deposit Collector.

M-7/18-1-85—Xerox copy of the Award of the Industrial Tribunal, Madras in Complaint No. 1/82 filed by V. Balan, Tiny Deposit Collector of Indian Bank.

M-8/—Circular issued to the Account holder of Tiny Deposit Scheme (Xerox copy).

K. NATARAJAN, Industrial Tribunal

[No. L-12012/119/86-D.II(A)]

का. घा. 1244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धकों के संबंध निषेधों और उनके कर्मचारों के बीच, प्रबन्ध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के जस्ट का प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 1544.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR

Industrial Dispute No. 131 of 1986

In the matter of dispute between :

Shri P. C. Bajpai All India Allahabad Bank Employees' Union, C/o Allahabad Bank, Swarup Nagar, Kanpur;

AND

The Chief Manager, Allahabad Bank, The Mall Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-12012/13/86-D.II (A) dated 26th November 1986, has referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Allahabad Bank in not taking into account the period of service rendered by Shri Nand Kumar Tiwari, Driver, Bangra Branch of the Bank from 14-12-73 to 7-2-79, towards his seniority and financial benefits is justified. If not, to what relief the workman concerned is entitled ?"

2. The present case is fixed today for cross examination of the workman. The authorised representative Shri V. N. Sekhari moved adjournment application in the case but in the other hand Shri P. N. Singh, Secretary, All India Allahabad Bank Employees Union attended the proceedings today.

Shri M. K. Verma, authorised representative for the management filed a settlement, the contents of which have duly been verified by both the representatives for the parties i.e. Shri M. K. Verma and Shri P. N. Singh Secretary, All India Allahabad Bank Employees Union. Both have requested that the reference may be answered in terms of the settlement 22-12-88 on which workman too has signed and who had duly been verified by Shri P. N. Singh, Secretary of the Union.

3. As such the question of allowing the adjournment application moved by Shri V. N. Sekhari does not arise because his authority has become infructuous after the appearance of the Secretary of the Union who has espoused the cause of the workman before the ALC(C).

4. The terms of settlement are as follows :

1. It is agreed that the appointment of the workman concerned Shri Nand Kumar Tewari, Driver at Orai, District Jalaun, will be predated to 14-12-73.
2. It is further agreed that the benefits in seniority or otherwise will be available to Shri Tewari aforesaid with prospective effect i.e. from the date of this settlement.
3. That thus this full and finally resolves the entire matter of dispute under reference.

5. Thus the reference is answered in terms of the settlement dated 22-12-88 verified before me on 30-3-89.

ARJAN DEV, Presiding Officer

[No. L-12012/13/86-D.II (A)]

का. प्र. 1245—औद्योगिक विवाद अधिनियम, 1947 (1947. का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ इंडिया के प्रबन्धकों के संबंध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 1245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government.

Date	Result	Remarks
15-7-1978	Included in the waiting list at No. 12	Number of vacancies and appointment in that year stood exhausted at waiting list No. 4
1979	-do-	No interview for promotion.
29-9-1980	Included in selection list & held in abeyance	Departmental enquiry contemplated due to major misconduct (show cause notice issued on 14-6-79 for major misconduct).
12-8-81 & 5-4-82	Included in selection list-held in abeyance.	On 21-6-1982 the management imposed a minor punishment against a contemplated action for major misconduct.
1-10-1983	Included in selection list, held in abeyance.	An another show-cause notice for major misconduct was issued on 11-5-1982.

The promotion policy from the clerical cadre to officer cadre, a settlement was reached on 31-8-1977 between the management of Bank of India (hereinafter called the Bank) and Bank of India Staff Union. The relevant clauses No. 9, 11, 14, 15, 16 and 18 of the settlement (Ex. M/22) which

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)
Case No. CGIT/LC(R)(49)/1986

PARTIES :

Employers in relation to the management of Bank of India, Regional Office, Russal Chowk, Jabalpur and their workman Shri N. P. Chowdhary, Staff Clerk-cum-Typist, Jabalpur Branch, represented through the Bank of India Staff Union, Vidyarthi Niwas, 175, Yadav Colony, Jabalpur (M.P.)

APPEARANCES .

For Workman/Union—Shri A. K. Vidyarthi.

For Management—Shri V. R. Krishnan.

INDUSTRY : Banking

DISTRICT : Jabalpur
(M.P.)

AWARD

Dated, April 13th, 1989

This is a reference made by the Central Government in the Ministry of Labour vide Notification No. L-12012(248)/85-D.II (A) dated 15-5-1986 for adjudication of the following dispute :—

“Whether the action of the management of Bank of India in denying promotion to Shri N. P. Chowdhary, Staff Clerk-cum-Typist, Jabalpur Branch on six occasions when he appeared for interview on (1) 15-7-78, (2) 29-2-80, (3) 14-4-81, (4) 12-8-81, (5) 5-4-82 and on 1-10-83 is justified? If not, to what relief is the workman concerned entitled?”

2. In view of the fact that vide order dated 26-9-86 this Tribunal on the application of the Union issued notice to the management and the management admitted certain facts. On the basis of admitted facts and documents following are the common grounds.

3. That the workman, Shri N. P. Chowdhary (hereinafter called the workman) joined his service on 8-7-74 as Clerk-cum-Typist as a Scheduled Castes Candidate at Sagar Branch. Workman having qualified on the basis of his service and educational qualifications applied for selection in the officers cadre. He appeared for written tests and interviews in various years and the result according to the management was as under :—

are material for the purpose of this case are being reproduced below :—

“9. (a) All candidates interviewed shall be listed in order of merit determined by the total number of marks

obtained under Clause 3(a), (b), (c) and (d) above and the appointments to officer's cadre shall be made strictly in order of such merit ;

- (b) In the event of an application by a candidate not selected for promotion, for rechecking of marks, the management shall have the marks rechecked by a Senior Officer provided such application is made within one month from the date of declaration of the result ;
- (c) The management will supply to the candidates, not selected for promotion, the marks obtained by them under each head of Service, Qualifications, Trade and Interview, if any; subject to (d) and (e) below ;
- (d) The candidates listed in the waiting list shall not be supplied with the break-up of marks as stated in clause (c) above until the expiry of one year or until the notice for the next promotion is displayed whichever is earlier ;
- (e) No correspondence/quarries/complaints in respect of the marks declared under clause (c) and (d) above will be entertained.

11. The management in its sole discretion have the right to appoint a lesser number of officers from the clerical grade than the requisite number and in that case the number of directly appointed officers be proportionately reduced in terms of the agreed ratio.

14. The management shall prepare a waiting list to the extent of 50 persons in order of merit and if any vacancy arises due to non-acceptance of an offer of promotion or reversion of a promotee from the officer's cadre to the clerical cadre etc. during the period of promotion, the management shall fill in such vacancy by promotion the next eligible person in order of merit according to the aforesaid list.

15. The waiting list shall remain in force for one year or until the notice for the next promotion is displayed whichever is earlier and the candidates on the waiting list who have not been promoted will have to apply again for promotion.

16. On completion of one process of promotion no further promotions will be made from the said list except to the extent provided in clause 14 for appointment of candidates from the waiting list. However, appointment of directly recruited officers may be spread over a period of time at the Bank's discretion.

- 18. A number of clerical staff punished for gross misconduct under the provisions of the Bipartite Settlements shall not be eligible to apply for promotion for a period of 3 years from the date of punishment. Further, where disciplinary action has already been initiated for any gross misconduct against an employee who is selected for promotion, the Management shall hold his promotion in abeyance till the disciplinary proceedings are over. If ultimately he is found to be not guilty, the Management shall promote the said employee from the date the decision is given after completion of the disciplinary proceedings. In case of punishment being awarded, he shall not be promoted and shall further be debarred from applying for promotion for a period of 3 years from the date of punishment."

EXPLANATION—A disciplinary action shall be deemed to have been initiated when an employee is served with a charge-sheet or with a notice or memo stating the alleged misconduct and asking him to show cause why disciplinary action should not be taken against him or why appropriate punishment should not be awarded to him."

While working at Sagar Branch Regional Manager had issued a Show Cause Notice dated 14-6-1979 to the workman as

to why action should not be taken against the workman on the following allegations :—

"On 20-2-79 Shri N. P. Chowdhary while working in Savings Bank counter collected a sum of Rs. 100 drawn on his S/B account without posting them in the ledger. He also issued a withdrawal slip without posting them in the ledger to misguide the Checking Officer. The folio number entered in the withdrawal slip did not belong to his account."

Zonal Manager, Jabalpur Division (since Zonal Office was shifted) after lapse of nearly 3 years issued a second Memo dated 8-5-82 on the same allegations (Ex. M/3) proposing punishment of warning for minor misconduct. The workman was accordingly awarded minor punishment of warning on 21-6-1982. The workman was then working on transfer from Sagar to Jabalpur (See order dated 1-3-1980). An other show cause notice on new charges was issued to him on 11-5-82 (Ex. M/12). Disciplinary authority awarded the punishment of warning vide order dated 2-11-1983 (Ex. M/8). The workman preferred an appeal on 1-12-1983 (Ex. M/20) which was rejected by the Appellate Authority on 11-1-1984 vide Ex. M/21.

4. The case of the workman is that the departmental enquiry was deliberately prolonged from 14-4-1979 to 8-5-1982. No Enquiry Officer was appointed by the Bank to give his findings. That in order to harass the workman management issued a second show cause notice on 8-5-82 proposing punishment relating to same allegations of 17-10-78 in which the allegations were termed as minor misconduct. There was no charge of major misconduct against the workman. Therefore his promotion could not have been withheld as per Clause 19.7(c) of the Bipartite Settlement. That the allegations in both the charge-sheets against workmen were false, mala fide and in order to withhold his promotion because he was an active union worker. Thus he has been victimised for Union activities.

5. The case of the management is that the workman could not have been promoted on 15-7-1978 in view of the fact that his name appeared at selected list at Sl. 12 wherein the vacancy got exhausted only at waiting list no. 4. As per Cl. 15 of the Promotion Policy Settlement (Ex. M/22) the waiting list remained in force for one year or until the notice of next promotion was displayed whichever is earlier. The workman was, therefore, required to apply afresh for promotion.

6. Thus the workman could not have been promoted on 29-2-1980, 12-8-81 and 5-4-1982 on account of the fact that the show cause notice was issued to him on 14-6-1979 and the enquiry was pending against him till 21-6-1982. The workman could not have been promoted on 1-10-1983 on account of the fact that on the relevant date another departmental enquiry was pending against him for gross misconduct in pursuance of the show cause notice dated 11-5-82. The said enquiry came to an end on punishment being awarded to him on 2-11-1983.

7. The workman was not entitled for promotional benefits even after the completion of enquiry after passing the order of punishment dated 2-11-83 in view of the provision of Cl. 19.6 of Bipartite Settlement. The further case of the management is that the promotion policy settlement confers the right to be considered for promotion and the workman has no right to be promoted as such. In any case, the charges levelled against the workman in both the enquiries were for gross misconduct and not for minor misconduct as per Cl. 19.7 of the Bipartite Settlement. The conversion of the gross-misconduct by the Disciplinary Authority into minor misconduct was on humanitarian ground and as such it does not absolve the workman of the gravity of the charge. The workman having not found exonerated from charges on both the occasions of enquiry he could not have been promoted on any of the dates mentioned in the reference.

8. The point for consideration referred to this Tribunal is whether on six occasions when the workman appeared for interview on the dates already mentioned above whether the action of the management in denying him promotion was justified. If not, to what relief the workman is entitled?

9. On the point in issue parties have led voluminous documentary and oral evidence. In order to keep the evidence adduced before me in clear perspective I will first briefly refer to the documentary as well as oral evidence. Management relied on documents Ex. M/1 to Ex. M/24 and examined seven witnesses in their support. On the other hand, the workman relied on 59 documents and examined two witnesses in his support.

10. Ex. M/15 is the workman's Bank Account which is the basis of show cause notice Ex. M/1=Ex. W/59, dated 14-6-1979 by the Regional Manager, Bhopal. In this connection, it is pertinent to note that this Notice Ex. M/1=W/59 was for gross negligence and gross misconduct on the facts narrated above. In the meantime, the workman was also transferred from Sagar Branch to Jabalpur perhaps on his own request on 1-3-1980. It appears that the management again woke up after lapse of nearly three years on 8-5-1982 and issue another show cause notice, Ex. M/3=Ex. W/57 to which the workman vide his reply Ex. W/55 dated 25-5-82 stated that his explanation is the same as earlier given. It is pertinent to note that this second show cause notice dated 8-5-1982 (Ex. M/3) was for minor misconduct proposing that why punishment of warning should not be awarded to him. In fact, the punishment for minor misconduct dated 14-6-1979 was imposed on him vide Ex. M/2 dated 21-6-1982. Thus the first domestic enquiry instituted as far back as on 14-6-1979 according to management came to a happy end but I feel that it was a tragic end to the career of the workman and it was also melodramatic as Ex. M/5 to Ex. M/7 and Ex. M/12 go to show. Ex. M/12 is the confidential report dated 13-11-1980 which was sent to the Regional Manager on the basis of his letter dated 21-2-1980. It is surprising that inspite of such a bad confidential report the Disciplinary Authority on the basis of reply Ex. M/4 dated 10-10-1983 gave the workman hearing on 2-11-1983 (Ex. M/16) and imposed the minor penalty of warning alone. The plea of the management is that this confidential report was not taken into consideration because the workman has felt sorry and tendered his apology he was left off with a penalty of warning for minor misconduct. Whatever the reason for this inordinate delay in to show cause notices Ex. M/1 and Ex. M/3 and the taking a lenient view of the matter the fact remains that the workman was punished for minor misconduct.

11. To the mind, this part of the story decides the whole issue. I therefore take up the second charge levelled against the workman vide show cause notice Ex. M/17, Charge-sheet Ex. M/18 to which the workman had replied vide Ex. M/19. Workman was again given a show cause notice dated 24-9-1983 (Ex. M/7) by the management proposing the punishment regarding warning for the first charge and stoppage of increment for the remaining charges. But as the proceedings dated 2-11-83 go to show that he had expressed sorry and tendered apology and he was only awarded warning this time also. Against this, the workman preferred appeal dated 1-12-83 (Ex. M/20) but his appeal was rejected on 11-1-1984 (vide Ex. M/21).

12. The management examined Shri S. K. Mankar (MW-1), the then Regional Manager, Jabalpur Branch, from 1981 to 1986 to show that the act of the workman in 1979 amounted to financial indiscipline linked with integrity. He has tried to explain why he was awarded minor punishment because the enquiry was prolonged and the workman had given assurance that he will not repeat the misconduct in future. Shri S. S. Waniker (M.W. 2) from the Personnel Department of Head Office, Shri Suryamurthy (M.W. 3) working as Third Officer in the year 1981, Shri Sudarshan Lal Jha (M.W. 4) the then Manager at Sagar Branch who stated that the confidential report (Ex. M/12) was not relating to the promotion, Shri M. M. Deshpande (M.W. 5) from the Head Office

was examined on the procedure of promotion, Shri Nishikant Bandi Wadekar (M.W. 6) regarding the procedure for withdrawal of cheque and to prove Ex. M/2 and Ex. M/3 and Shri S. N. Ellawadi who was then working as Officer and who was also charged along with the workman in the year 1979 and latter he also was awarded the punishment of warning.

13. From the evidence of above witnesses management has tried to explain the delay of nearly three years in concluding the enquiry and tried to explain why though charged for gross misconduct was awarded a simple warning at both the occasions. Whatever be the reason, the fact remains that this melodrama on the part of the management marred the promotional benefit to the workman right from 1979 to this date and it costed the workman his entire career.

14. On the other hand, the workman relied on documents Ex. W/1 to Ex. W/59 and gave his own statement and examined Shri N. K. Banerji. The sum and total of his documentary as well as oral evidence is that he was denied promotion arbitrarily, against the rules on account of his union activities and even after his representation to various authorities in the department and in the country he could not get any redress, so ultimately after conciliation this matter is placed before this Tribunal. His plea further is that he was not only denied promotion, but also he was not given the mark sheets or the results throughout which amounts to unfair labour practice and victimisation. I am of the opinion that whatever were the allegations and counter allegations this Tribunal is to see whether any departmental rules and law has been violated and the workman has been victimised or unfair labour practice has been practised against him in view of admitted proved documents and oral evidence adduced before me. I have already dealt with the documents and the oral evidence of general nature. To my mind the decision on allegation or counter allegation will depend on the finding as to which parties has flouted the rules and the law. Before I take up this issue I may point out that the proforma Ex. M/10 and the application form Ex. M/11 and the Central Government Industrial Tribunal's order dated 20th April, 1982 are to be kept in view while deciding the point in issue. The decision of the issue involve in this case will depend on the construction of Ex. M/22 and reply to the admission of fact date 12th November, 1986 and the Bipartite Settlement dated 31st August, 1977. I have already reproduced the relevant provisions above.

15. Pursuant to the notice of admission of facts the management's witness Shri S. S. Waniker (M.W. 2) have made certain admissions and tried to explain certain circumstances. He has admitted that promotion cannot be held in abeyance for misconduct which is minor and that no disciplinary action was pending against the workman in the year 1978 and that the workman was granted loans during the pendency of the enquiry proceedings at the discretion of the management. I agree that looking to the office routine much cannot be made of granting loans even though it may be against rules because the material question is whether enquiries were pending and what is their effect on the promotion of the workman which is only material referred to this Tribunal. Workman had also applied for copies of certain documents vide order of this Tribunal dated 16th July, 1987 but the management failed to produce the same on the ground that they have been destroyed as per rules in 1985. The plea of the workman is that rules do not permit destruction of documents when the promotional case of the workman was pending. Whatever be the reason the fact remains that the management failed to show this Tribunal the result/marks obtained in his various written examination and oral interviews yearwise and the categoriwise i.e. General, Scheduled Caste and Scheduled Tribes. I produced the rules in this regard above.

16. I have already reproduced the Cause 9. Clause 9(b) says that in the event of an application by a candidate not selected for promotion, for rechecking by a Senior Officer provided such application is made within one month from the date of declaration of the result. Grievance of the workman is that the mark sheets were not supplied to him, therefore he was deprived of an opportunity to apply for rechecking of marks. Plea of the management in this regard is that the same were not supplied to him because his name was kept in the waiting list in the year 1978, 1980, August, 1981, 1982 and 1983. There was no examination in the year 1979 and

he had failed in the examination held on 14th August, 1981. In this regard Cl. (d) of Rule 9 is relevant which says that—

"The candidates listed in the waiting list shall not be supplied with the break-up of the marks as stated in Clause (c) above until the expiry of one year or until the notice for the next promotion is displayed whichever is earlier."

The aforesaid clause required that marks sheets with break up of marks shall not be supplied until the expiration of one year or until the notice for next promotion is displayed whichever is earlier. If his case was kept in waiting list the above rule clearly says that mark-sheets shall not be supplied until the expiration of one year or next notice for promotion. In other words, the same ought to have been supplied to him after the expiration of one year or when the notice for next promotion was displayed but this has not been done. Management therefore clearly committed breach of this rule and deprived him of the opportunity for getting marks re-checked as per Rule 9(b). If he had failed in April 1981 then marks ought to have been supplied to him immediately as per rule. On this occasion also the management committed breach of this rule.

17. On the application of the workman the mark-sheet and all connected documents with his results for various years were called for from the management. Management took up the plea that the same has been destroyed as per departmental orders dated 8-3-1985. This neither appears to be true nor as per rules as has been laid down in Branch Circular No. 75/85 General Instructions/81/7 dated 14-5-81 (Ex. W/1) which lays down in Cl. 7 that records relating to the matter which are in dispute or subject to any legal proceedings should not be destroyed until the orders or proceedings withdrawn, settled or terminated. These instructions are issued on the basis of Chapt. 25 of Manual of Instructions Vol. II, para 7. Thus it appears that the management has deliberately withheld these documents and did not produce them before this Tribunal which raises an adverse inference against the management. This is fortified by the nature of affidavit filed by Shri S. S. Joshi, Regional Manager, Jabalpur which is not in positive form. It is based on information received from office record maintained by the Head Office of the Bank at Bombay. Clause 14 of Circular dated 14-5-81 (Ex. W/1) is being reproduced below:—

Clause 14—

- (a) The management will prepare, in order of merit, 3 Waiting Lists for (i) Scheduled Castes (ii) Scheduled Tribes and (iii) Other than Scheduled Castes/Tribes which will be 10 per cent of the number of vacancies (aggregate for all Circles) in the officer cadre to be filled in on each occasion by promotion from Clerical cadre (the fraction to be rounded off to the next full figure). The Waiting List will remain in force for one year or till the issue of the notice calling for application for promotion on the next occasion whichever is early.
- (b) All candidates who could not be appointed due to non-availability of vacancy in the preference circles indicate by them as per the procedure stated above will also be included in the Waiting List.
- (c) If a vacancy in a particular Circle is caused due to non-acceptance of promotion or due to reversion of a candidate after accepting promotion, such vacancy will be filled in, in order of merit from amongst the candidates on such waiting list who have opted for such Circle as any of their preference Circle as also those candidates who have indicated their willingness for posting anywhere in India."

In this regard, it is alleged by the management that on 15-7-1978 the workman had passed the examination but his name appeared at waiting list No. 12, which had already exhausted at No. 4. The workman has challenged this and called for certain documents (marked Ex. P/1) so to show that in 1978 there were 701 vacancies for General Category.

164 for Scheduled Castes and 44 for Scheduled Tribes candidates, the total being 909 vacancies. On the basis of this, workman has challenged the plea of the management and asserted that in the year 1978 out of 77 candidates kept in the reserved list 66 of general Category and 11 of SC/ST candidates did not join and took reversion as is apparent from the seniority list of officers as on 30-6-79 prepared in the Book form by the management. Therefore vacancies so created, he was entitled to be absorbed in those vacancies falling within that year. To my mind, there is some substance in this contention and the case of the workman should have been considered on this basis as well. This is so specially looking to the fact that the separate seniority lists of SC/ST candidates were not prepared which would have shown the actual vacancies caused in this reserved categories after some candidates took reversion and did not join. Only a consolidated list was prepared. Therefore, to my mind, it will meet the end of justice if the matter is reconsidered in the light of my observations to follow for the year 1978.

18. Rule 15 says that waiting list shall remain in force for one year or until the next notice after which it will be rendered useless and the candidates will have to apply afresh. Therefore if certain candidates did not join or took reversion those candidates who were next to them ought to have been considered which, it appears to have not been done in the instant case. The allegation of the workman is that even the candidates who were not selected have been taken after certain candidates took reversion. This is a matter, to my mind which should be reconsidered in the light of the record of the department to do complete justice.

19. Now the next rule which is relevant and material in this regard is Rule 18 which is against being reproduced here for the sake of convenience:—

"18. A member of clerical staff punished for gross misconduct under the provisions of the Bipartite Settlements shall not be eligible to apply for promotion for a period of 3 years from the date of punishment. Further, where disciplinary action has already been initiated for any gross misconduct against an employee who is selected for promotion, the Management shall hold his promotion in abeyance till the disciplinary proceedings are over. If ultimately he is found to be not guilty, the Management shall promote the said employee from the date the decision is given after completion of the disciplinary proceedings. In case the punishment being awarded, he shall not be promoted and shall further be debarred from applying for promotion for a period of 3 years from the date of punishment."

EXPLANATION—A disciplinary action shall be deemed to have been initiated when an employee is served with a charge-sheet or with a notice or memo stating the alleged misconduct and asking him to show cause why disciplinary action should not be taken against him or why appropriate punishment should not be awarded to him."

The above rule says that the "member of the clerical staff punished for gross misconduct under the provisions of Bipartite Settlement shall not be eligible to apply for promotion for a period of three years from the date of punishment". I have underlined the words "punished for gross misconduct" because I feel that it was not given due emphasis by the management. It is only the staff which has been punished for gross misconduct who are debarred to apply for promotion for a period of three years (Now it has been substituted to one year). A separate provision has been made in this rule for persons against whom disciplinary proceedings are pending when the rule says further "where disciplinary action has already been initiated for gross misconduct against an employee" who has been selected for promotion, the management shall hold his promotion in abeyance till the disciplinary proceedings are over". This goes to show that the result of persons against whom disciplinary action has already been initiated their result is to be kept in abeyance till disciplinary proceedings are over. In other words, since when disciplinary proceedings are over

the claim for promotion will revive and he has to be promoted. But this has not been done by the management in the instant case. The plea of the management in this regard is that his case was governed by the later part of this rule i.e. if ultimately he is found to be not guilty the management shall promote the said employee from the date of the decision is taken after completion of disciplinary proceedings. In case the punishment being awarded he shall not be promoted and shall further be debarred for number of year laid down under the rule. The contention of the management is that he was found guilty therefore he was not promoted. But it is surprising to note that he was not debarred from applying for promotion for any year.

20. In this regard the contention of the management that a show-cause notice was issued to the workman dated 14-6-1979 and those proceedings came to an end when he was imposed punishment of warning for minor misconduct on 21-6-1982. Therefore his result was withheld on 29-2-1980, 12/14-8-81 and 5-4-82. Further the management in this regard stated that when initially on 14-6-1979 he was given a show-cause notice (Ex. M/1) for major misconduct which amounted to financial indiscipline linked with integrity and Bank was justified in taking serious view of the misconduct. However looking to the assurance given by the workman a lenient view of the matter was taken and he was awarded the minor penalty of warning only. When his act amounted to financial indiscipline linked with integrity he was not promoted though his name was included in the list of successful candidates because it was held in abeyance. I am unable to agree. The workman was given a second show-cause notice dated 8-5-1982 (Ex. M/3) as to why the proposed punishment of warning should not be awarded to him. This goes to show that at least on 8-5-1982 the proposed punishment was for a minor misconduct and thereafter there was no justification in keeping his result in abeyance. Further contention of the management is that the workman had misconducted himself again and another show-cause notice was issued to him on 11-5-1982. Therefore his successful results for the year 1983 onwards were kept in abeyance and since the punishment awarded on 21-6-1982 though minor was for financial indiscipline linked with integrity he was not promoted earlier and his result continued to be kept in abeyance.

21. This to my mind said the least is not only misinterpretation of Rule 18 but it appears that the workman is not unjustified when he blames the management for victimisation and their unfair labour practice.

22. In the list of my above observation on Clause 18 I proceed to consider the case of the workman yearwise. Admittedly there was no enquiry pending against the workman before 14-6-1979. Therefore he was entitled to be promoted but as the management says he was kept in waiting list which got exhausted at No. 4 and his name was at No. 12. But as I have already pointed out that a separate list of Scheduled Castes and Scheduled Tribes candidates was not prepared, therefore he is entitled to get his case examined for the result declared on 15-7-1978.

23. In the year 1979 there was no examination. His result was withheld and kept in abeyance on 29-9-1980 and 14-4-1980 on the ground that he was charged for misconduct. As pointed out earlier the charge against the workman was not for gross misconduct. In any case, as soon as he was imposed the punishment of warning for minor misconduct on 21-6-1982 he became entitled to get his result of successful candidates declared on that date because in answer to the questionnaire of the workman dated 26-9-1986 management has admitted that the promotion was kept in abeyance for misconduct which is minor and as pointed out above the workman was neither punished for gross misconduct nor there was any charge of gross misconduct against him. In any case, whatsoever may have been the charge the enquiry proceedings came to an end on 21-6-82 with simple warning. Therefore the list kept in abeyance ought to have been revised and he ought to have been declared successful and posted as officer given him seniority with effect from that date. This would have been the correct position.

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23. Management has relied on AIR 1975 SC 1892; 1982 LIC p.97; 1981 LIC 1304 (Cal H.C.). These authorities do not help the management in view of my findings above. Management has also relied on AIR 1974 SC 17 and various other authorities which relate to unfair labour practice, victimisation on the part of the management. On facts, these authorities also do not help the management.

24. On the other hand, workman has relied on certain authorities which go to show that the action of the management in keeping the result in abeyance of the workman even after 21-6-1982 is illegal (1973 LIC 370 Vol. 6; 1984 LIC 1327 (Delhi H.C.) and 1984 LIC 46 (Delhi H.C.).

25. From the above observation, I am of the opinion that denying the promotion to the workman at least with effect from 15-7-78 is unjustified being illegal.

26. After perusal of the concerning rules and the record I find that withholding his promotion from 15-7-78 is also unjustified and he is entitled to get his case reconsidered from that date onwards. On behalf of the workman it has been pointed that he is entitled to a direction that he be promoted with effect from 15-7-1978 with all consequential monetary and promotional benefits. The nature of the case for determination before me has been considered by the Hon'ble Supreme Court in the State of Mysore Vs. Syed Mahmood (AIR 1968 SC 1113). In that case Rule 43(b) of the Mysore State Civil Services General Recruitment Rules, 1957 required promotion to be made by selection on the basis of seniority-cum-merit, that is seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion. While making selections for promotions from the cadre of junior statistical assistants, the State Government did not consider the case of the respondents therein who were junior statistical assistants and published a list promoting persons ranking below them in point of seniority. The respondents therein filed writ petition before the High Court. The High Court while refusing to quash the seniority list directed the appellant-State to promote the respondents as from the dates on which their juniors were promoted and treat their promotion as effective from that date. In the appeal filed against the judgment of the High Court the Hon'ble Supreme Court in the case cited above observed :—

"that while making selections for promotion to the post of senior statistical assistants from the cadre of junior statistical assistants in 1959, the State Government was under a duty to consider whether having regard to their seniority and fitness they should be promoted. Since the promotions were irregularly made the respondents therein were entitled to ask the State Government to reconsider their case. In the circumstances.....the High Court could only issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness, the respondents should have been promoted on the relevant dates when officers junior to them were promoted and that instead of issuing such a writ the High Court had wrongly issued a writ directing the State Government to promote them with retrospective effect."

It was further observed that—

"High Court ought not to have issued such a writ without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959."

While considering the case of State Bank of India and others Vs. Mohd. Mynuddin (AIR 1987 SC 1889) the Hon'ble Supreme Court analysed the case of State of Mysore Vs. Syed Mahmood (supra) in the following words :—

"The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection of State Government or the statutory authority alone should

be directed to consider the question whether the employee is entitled to be so promoted and that the Court should not ordinarily issue a writ to the Government or the statutory authority to promote an officer straightway."

In the light of the above observations of the Hon'ble Supreme Court this Tribunal cannot give direction that officer be promoted. Only the direction can be given by this Tribunal that his case be reconsidered for promotion in the light of the observations made by this Tribunal. Accordingly I answer the reference and make my award as under :—

That the action of the management of Bank of India in denying promotion to Shri N. P. Chowdhary, Staff Clerk-cum-Typist, Jabalpur Branch on six occasions when he appeared for interview on 15-7-1978 and subsequent interviews held in the year 1980, 1981, 1982 and 1983 is not justified. He is entitled to be reconsidered for promotion and consequential benefits with effect from 15-7-1978 onwards and be granted relief, any, accordingly. This should be done by the management within four months from the date of publication of this award. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-12012/248/85-D. II(A)]

नई दिल्ली, 10 मई, 1989

का. आ. 1246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार बैंक आफ बड़ोदा के प्रबन्ध तंत्र के सर्वोच्च नियंत्रकों और उनके कर्मचारियों के बीच अन्वय में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 10th May, 1989

S.O 1246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI ARIAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KAPUR

Industrial Dispute No. 41 of 1988

In the matter of dispute between :

The Assistant General Secretary U. P. BOB Employees
Union C/o Bank of Baroda Latouch Road, Kanpur.

AND

The Regional Manager, Bank of Baroda, Gumti No. 5,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/164/87-D.II(A) dated 25th March, 1988, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the Management of Bank of Baroda in not promoting Shri J. N. Jadhari to the post of Accounting Machine Operator, a special allowance post w.e.f. October, 1979 is justified. If not to what relief is the workman entitled?

2. The instant case was fixed for affidavit evidence from the side of the workman on 14-3-89. The management also filed an objection on the appearance of Shri V. N. Sekhari from the side of the workman on 2-2-89 and the same was also fixed for disposal on 14-3-89. But on 14-3-89, the workman moved application to the effect that since he had been promoted to the post of Officer, he is not interested in contesting the case. Shri V. N. Sekhari, has verified the signatures of the workman on the application dt. 14-3-89.

3. Thus in view of the application dt. 14-3-89 of the workman who has been identified by his authorised representative Shri Sekhari, the reference has become infructuous.

4. The reference is answered accordingly.

[No. L-12012/164/87-D.II(A)]

ARIAN DEV, Presiding Officer

का. आ. 1247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबन्ध तंत्र के सर्वोच्च नियंत्रकों और उनके कर्मचारियों के बीच, अन्वय में निम्नलिखित औद्योगिक विवाद में अथ न्यायालय, एरनाकुलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 1247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Ernakulam as shown in the Annexure in the industrial dispute between the employers in relation to the Indian Overseas Bank and their workmen, which was received by the Central Government.

ANNEXURE

IN THE LABOUR COURT, ERNAKULAM

Tuesday, the 28th day of February, 1983

Industrial Dispute No. 63 of 1986 (C)

BETWEEN

The Indian Overseas Bank represented by the Manager,
Indian Overseas Bank, Ernakulam Branch, M. G
Road, Ernakulam. Cochin-682001.

AND

Their workman Shri N. Nagendran, House No. 10/1012,
Dhobby Street, Veli, Fort Cochin, Cochin-682001

REPRESENTATIONS :

Shri B. S. Krishnan,
Advocate, Frakulam. ...For Management.

Shri K. S. Madhusoodhanan,
Advocate, Cochin-1. ...For Workman.

AWARD

Dismissal of one N. Nagendran, who was an employee under the Management of Indian Overseas Bank in relation to its Branch at M.G Road, Ernakulam, Cochin, is the issue referred for adjudication by the Government of India. The matter was referred first to the Industrial Tribunal, Madras for adjudication by the Government of India as per Order No. L-12012/67/86-D.II(A) dated 6-6-1986. Thereafter the case was transferred to this court by the Government of India as per Order No. L-12012/67/86. D.II(A) dated 4-8-1986. The dismissal of the workman was after a domestic enquiry. The validity of the domestic enquiry was upheld by me as per my

order dated 14-2-1989. The findings were also confirmed by me. Necessary facts have been stated in that order which is extracted in full hereunder :—

"PRELIMINARY ORDER

The industrial dispute between the above parties was referred to the Industrial Tribunal, Madras for adjudication by Government of India as per Order No. L-12012/67/86.D. II(A) dated 6-6-1986. The issue referred is "Whether the action of the Management of Indian Overseas Bank in relation to its Branch at M. G. Road, Ernakulam Cochin in dismissing from service Shri N. Nagedran, with effect from 23-1-1982 is justified? If not, to what relief is the workman concerned entitled?" The case was numbered on the file of that Court as I.D. 41/86. Thereafter the workman filed a Writ Petition O.P. No. 4662/86 in the High Court of Kerala praying for the transfer of this Industrial Dispute from the Industrial Tribunal, Madras to the Labour Court, Ernakulam. Thereupon the Government of India in exercise of the powers conferred by Sub-Section (1) of Section 33B and clause (C) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 withdrew the proceedings pending before the Industrial Tribunal, Madras and transferred the same to the Labour Court, Ernakulam with the direction that this Court shall proceed with proceedings from the stage at which it is transferred and dispose of the same according to law, as per Order No. L-12012/67/86. D. II(A) dated 4-8-1986. After receiving the reference under transfer this Court has registered this case as I.D. 63/86(C) and proceeded with the proceedings from the stage at which it was transferred.

2. The workman Nagedran was working as Messenger in the Management Bank. While so he was discharged from service with effect from 23-1-1982 for certain proved misconducts on the allegations that,

- (i) On 25-11-1980 he was tendered a collection cheque bearing No. 801101 for Rs. 2,488.50 issued by Kerala State Financial Enterprises received from the Mylapore branch as collection item (their ODB No. 20/1). Though the cheque was presented at the District Treasury on 25-11-80 and the cash has been collected by him the same day he had not remitted the collection proceeds to the branch till 23-12-80 and thus misappropriated the same for a period of one month.
- (ii) In view of the above fraud he had also absented from duty from 25-11-80 without any intimation to the branch and his whereabouts were not known till 23-12-80 the day on which he deposited the misappropriated amount to the branch. Subsequently he reported for duty only on 24-12-80.
- (iii) On 11-9-80 he had taken a sum of Rs. 216 from the branch towards purchase of postal stamps and did not report to office till 14-9-80 and was not able to satisfactorily explain the cause of his action.
- (iv) His leave record was highly irregular vide AGM(R) letter dated 23-11-78, 22-2-79 and 24-5-79 on several occasions and punished after enquiry vide Disciplinary Authority's letter dated 20-2-80 and advised to show improvement in his leave record he had failed to improve his attendance and attitude towards work and continued to absent frequently without any intimation to the branch and without having any leave to his credit and on insufficient grounds.

The memo of charge was served on the workman who has submitted his explanation to the charges. Dissatisfied with the explanation submitted by the workman the Management ordered a domestic enquiry and the Disciplinary Authority conducted an enquiry. In the enquiry it was found by the Enquiry Officer that the workman is guilty of all charges. Accepting the findings of the Enquiry Officer, the workman was discharged from service. (Even though in the order of reference the issue is "dismissal from service" both the Man-

agement and the workman in their respective statements admitted that the workman was not dismissed but only discharged from service). The workman is challenging the report of the enquiry officer and his findings.

3. The workman has filed a claim statement contending as follows :—

While he was working as Messenger in the Management Bank he was discharged from service with effect from 23-1-82. He was charge-sheeted for the misconducts raising four allegations. An enquiry was conducted by the Disciplinary Authority Shri C. M. Premkumar by nakedly violating the course of natural justice. In the enquiry report it was found that all the charges are proved. Even though the worker was allowed to be represented by a Union representative very important documents relied upon by the Management were not supplied to the workman. The Enquiry Officer has not properly appraised the defence case. He was biased and showed little value to the actual facts put forward by the defence. The Management failed to examine material witnesses. The workman admitted that he had encashed the cheque for the amount of Rs. 2488.50. His explanation was that 8 other cheques having small amounts were also entrusted with him and he collected the amount of Rs. 1,279.25 for the same. For the big amount, the treasury gave a token and insisted him to come in the afternoon. He returned and entrusted the employer the sum of Rs. 1,279.25 and again went to the Treasury. He collected the amount of Rs. 2,488.50, but unfortunately the amount was found missing on his return to the Bank. Due to the mental shock he did not go to the Bank, but came to home and thereafter he was admitted at St. John's Hospital, Vyttila, Ernakulam and hence he could not inform the Bank duly and furnish the leave application. Bank cannot be allowed to penalise the worker for their own violation of the settlement. The enquiry Officer showed only scant respect to the defence plea. There is not even a whisper of the hospitalisation and the certificate from St. John's Hospital, Vyttila. After his discharge from the hospital he made the payment to the Bank and the so-called temporary misappropriation was beyond the control of the worker and it was the Management who violated the terms of settlement by entrusting to collect a huge amount. The bank should have avoided the enquiry and the consequential discharge of the worker. Regarding the stamp issue the worker had stated that he had purchased postal stamp worth Rs. 216. But at the Post Office, one of the neighbours told him that his aunt's child was demised. He immediately went to his home. But his mother was not found in the home and hence without informing her he rushed to Trichur. He could be relieved from there only on 15-9-1980 as he was engaged in the death ceremonies. The enquiry officer brushed aside the version mainly on the reason that immediately after 11-9-1980, they enquired the whereabouts of the worker at his house, but got nothing. But the enquiry officer purposefully shut his eyes on the naked fact that he rushed to Trichur without informing his mother. The Enquiry Officer should have appraised the situation that it was only a belated charge, that the worker had not misappropriated any money, that he had forthwith purchased the stamp, that it was 11 along with him, that the worker could do nothing with the postal stamp and that if he had any dishonest intention, he could have misappropriated the money itself. On the charge of leave anomalies, all these occasions the worker had applied for leave and often with medical certificates. The delay, if any, caused was due to the control beyond his capacity and he cannot be penalised to such an extreme level. It can be seen that not only the enquiry was improper and naked violation of natural justice, but also there is no prima facie evidence to cope with guilt. The back record of the worker is not tainted with misconducts. If at all it is assumed that the misconduct is proved for argument sake, the punishment of discharge is harsh and disproportionate and the worker is entitled to reinstatement with back wages or such other consequential reliefs.

4. It is pertinent to note that the claim statement was signed not by the workman but by his counsel. So no claim statement is filed by the workman in this case.

5. The Management has filed a counsel statement contending as follows :—

The enquiry was conducted by the Disciplinary Authority adhering to all the principles of natural justice and in accordance with the procedure laid down in the settlement reached between the Union representative of the workman and the Bank Management. The worker fully participated in the enquiry and availed of the opportunities. He laid cross examined the witness of the Management as well as adduced his own evidence. The Disciplinary Authority after careful consideration of the evidence on record came to a bona fide conclusion of guilt against the workman. The Disciplinary Authority after considering the evidence on record was satisfied that the guilt is established against the workman and he was discharged from service. His appeal to the Appellate Authority was also dismissed. At no point of time the worker has objected to the proceedings in the enquiry or raised any objection with regard to the conduct of the enquiry and therefore he cannot be now heard to submit the various allegations against the enquiry officer and the conduct of the enquiry. The misappropriation is also admitted even in the claim statement. Again in the claim statement itself the counsel has admitted the misappropriation of the amount entrusted to the worker for the purchase of the stamp. Whatever be the explanation the admission still remains. The story advanced by way of explanation is an after-thought. It is to be noted that the worker was sent for collection of the cheque. He never protested against that. Only when the Management found out about the misappropriation he has come forward with a statement that the amount was huge and that is why it was missing. No medical certificate was ever received by the Management at any time and the same is only an after-thought. The Bank is a public institution and it is handling public money and even an attempt of misappropriation cannot be tolerated.

6. The worker has filed a rejoinder reiterating the claims in the claim statement and refuting the contentions in the counter statement of the Management.

7. The question to be considered is whether the enquiry conducted by the Management is proper and legal and the findings of the enquiry officer are supported by legal evidence and material facts.

8. For the Management MW1 was examined and Ext. M1 marked.

9. The workman would allege that the domestic enquiry and its report are vitiated for the reasons that the enquiry officer has acted as judge and prosecutor and no list of witnesses was supplied to him before the examination of witnesses and the copies of the documents which were relied on by the enquiry officer were not furnished to the workman and the evidence had been collected by the enquiry officer behind the back of the workman and the principles of natural justice were not observed. In support of his contention the workman has relied on some decisions of the Karnataka High Court. So also the counsel for the workman has relied on the decision in A.I.R. 1970 SC 1255 and 1963 II LLJ 371.

10. The learned counsel for the Management would argue that the following procedure have been complied with by the Management with regard to the disciplinary action taken against the workman. They are :

- (i) Issued charge-sheet setting forth the allegations and called for explanation.
- (ii) Sent the enquiry notice in advance, informing the place, time and date of enquiry.
- (iii) Read over the charges and permission was granted to be defended in the enquiry by the Asstt. General Secretary of All India Overseas Bank Employees Union. The representative has cross-examined the Management's witnesses and examined the defence witnesses.
- (iv) The worker's representative was allowed to scrutinise the documents proposed to be relied on by the management and informed the evidence that the management wished to be relied on before the enquiry.

(v) The copy of the enquiry proceedings were furnished to the worker and opportunity was given to file summing up statement and the worker has accordingly submitted summing up statement also.

(vi) Forwarded the copy of the findings arrived at on the basis of the evidence on record, to the worker and to show cause as to why the proposed punishment should not be imposed on him. He has not availed of the opportunity. Thereafter the punishment was inflicted.

The learned counsel for the Management would rely on the decision reported in 1987 K.L.J 1211 in support of his argument that "an employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give the explanation as also any evidence that he may wish or tender in his defence. He shall be permitted to appeal before the officer conducting the enquiry to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered trade union of bank employees or with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him". The learned counsel for the Management was also relying on the settlements dated 19-10-1966 and 31-10-1979 entered into between the Indian Banks Association and the All India Bank Employees Association. In Clause (3)iii of the settlement dated 31-10-1979 it has been stated that Clause 19.14 of the settlement between IBA and AIBEA dated 19-10-66, para 521(12) of the Sastri Award and para 18.28 of the Desai Award, clause 17.14 of the settlement between IOB and AIOBEU dated 14-12-66 Clause 19.14 of the settlement between the BOB and AIOBEF dated 13-12-66 have been modified as under :

The Chief Executive Officer or the Principal Officer in India of a Bank, or alternate officer at the Head Office or Principal Office nominated by him for the purpose shall decide which officer (i.e. Disciplinary Authority) shall be empowered to take disciplinary action in the case of each office or establishment. He shall also decide which officer or body higher in status than the officer authorised to take disciplinary action shall act as appellate Authority to deal with or hear and dispose of any appeal against orders passed in disciplinary matters. These authorities shall be nominated by designation to pass original orders or hear and dispose of appeals from time to time and a notice specifying the authorities so nominated shall be published from time to time on the Bank's notice board. It is clarified that the disciplinary authority may conduct the enquiry himself or appoint another officer as the enquiry officer for the purpose of conducting the enquiry. He would further argue that on a perusal of the service conditions of the Bank employees the following points can be deduced :—

- (i) Intimation of the decision to take disciplinary action to be given.
- (ii) Charge-sheet setting forth the circumstances appearing against him to be given.
- (iii) Enquiry in detail should be conducted.
- (iv) Opportunity to cross-examine the Management's witnesses and produce evidence in defence to be given.
- (v) Permission to be defended by a representative of a registered union to be given.
- (vi) Hearing as a punishment to be offered.
- (vii) The disciplinary action shall be taken by a designated authority. He has to frame charges and inflict the punishment for the proved charges.
- (viii) The disciplinary authority can conduct the enquiry by himself.

11. Then the main question to be considered is whether the enquiry can be said to be vitiated on account of the

fact that it was conducted by the Disciplinary Authority who framed charges against the workman. It is an admitted fact that the enquiry officer was the disciplinary authority and there was no presenting officer for the Management also. It can also be seen that the enquiry officer has examined the witnesses of the Management in chief and the enquiry officer has also cross-examined the witness of the workman. The learned counsel for the workman would argue that it is a normal rule that a person prosecuting the case as a management representative, especially when he is in the pay roll of the management Bank, will be biased against the delinquent. The learned counsel for the workman would further argue that the manner in which the enquiry authority conducted the enquiry by cross-examining defence witness and putting leading questions to prosecution witness does establish that the enquiry authority was biased as he acted both as Prosecutor and Judge in recording evidence. The learned counsel for the workman has relied on the decision reported in 1987 (9) reports (Kar.) 757, 1987 ILR (Kar.) 366 and 1977 (2) Karnataka Law Journal 225 in support of his argument. But the learned counsel for the Management would argue that the disciplinary authority may conduct the enquiry himself or appoint another officer as enquiry officer for the purpose of conducting the enquiry. He would further argue that the absence of presenting officer will not vitiate the enquiry in any manner. He argues relying on the decision reported in 1970 1 LLJ 26 (SC) that the Company was not represented by an officer separately for presenting their case that the senior Labour Officer who put questions to the witnesses and elicited answers from them and thereafter allowed them to be cross-examined by the workman, took statements from the worker and asked questions for clarification from him won't warrant the criticism that the senior labour officer acted both as the Prosecutor and the Judge when he recorded evidence in the case. The Managers can conduct the enquiry and such enquiries are valid. The enquiry officer in this case has elicited facts from the Management's witnesses without asking any leading questions and the worker was questioned only for clarification of certain points which any decision making authority will normally do. He would further argue relying on the decision reported in 1983 1 LLJ 1 (SC) that a domestic enquiry officer is a managerial function and the enquiry officer is more often a man of the establishment ordinarily he combines the role of Presenting-cum-Prosecuting Officer and an enquiry officer, a Judge and Prosecutor rolled into one. The learned counsel for the Management would further argue relying on the decision in Francis v. Bank of Cochin Ltd., (1987-2-KLT 720) that the mere fact that the domestic enquiry was entrusted to the Law Officer of the Bank and the Management had its Personnel Officer as presenting officer will not vitiate the enquiry. A domestic enquiry is a managerial function and the enquiring officer is more often a man of the establishment. If the enquiry had been fair and the delinquent employee had reasonable opportunities for access to the records, to cross-examine witnesses and to defend himself, it cannot be said that the enquiry is vitiated for the reasons that it was held by an officer of the establishment. In the absence of rules it is in the discretion of the Enquiry Officer to permit legal representation at a domestic enquiry unless the delinquent officer is pitted against a legally trained person engaged by the management as Presenting Officer. The decision reported in 1970 1 LLJ 26 (SC) would go to show that the Company was not represented by an officer separately for presenting their case, that the senior labour officer who put questions to the witnesses and elicited answers from them and thereafter allowed them to be cross-examined by the workman, took statements from the worker and asked questions for clarification from him, won't warrant the criticism that the senior labour officer acted both as Prosecutor and Judge when he recorded evidence in the case. In view of the principles enunciated in the decision and in view of the fact that a domestic enquiry is a managerial function and the enquiring officer is more often a man of the establishment and if the enquiry had been fair and the delinquent employee had reasonable opportunities for access to the records, to cross-examine witnesses and to defend himself, It cannot be said that the enquiry is vitiated for the reason that it was held by an officer of the establishment as enquiring officer and presenting officer. Therefore the contention of the workman that the enquiry was vitiated on the ground that the disciplinary authority was the enquiry officer and presenting officer will not hold good.

12. Yet another contention raised by the workman challenging the validity of the enquiry is that the list of witnesses was not supplied to him. As he was not served with the list of witnesses sufficiently early, he could not examine the witnesses of the Management effectively after preparing his defence and so it cannot be safely concluded that sufficient opportunity was given to the worker to defend him. So also the copies of all documents were not furnished to the workman before those documents were got marked. So the learned counsel for the workman would argue relying on the decision reported in A.I.R. 1970 SC. 1255 that the material collected behind the back of the workman cannot be used against the workman and the collection of materials behind the back of the workman will vitiate the enquiry. The learned counsel for the workman would further argue relying on the decision reported in 1963 1 LLJ 392 that a workman who is to answer a charge must not only know the accusation, but also the testimony by which the accusation is supported. The learned Counsel for the Management would argue that before the commencement of the enquiry, the workman's representative wanted to scrutinise the documents and know the evidence that the management proposed to be relied on in the enquiry. It was only after allowing this prayer that he had agreed to proceed with the enquiry. The Management witness were the Branch Manager and the Accountant of the Branch in which the worker had been working. Their statements were recorded in the presence of the worker and his representative. He has effectively cross-examined the witnesses of the management and adduced defence evidence. If there was any difficulty or if he wanted more time to prepare his defence he could have sought for it. The learned counsel for the Management would further argue relying on the decision reported in 1984 1 LLJ 2 (SC) that those who complaint of violation of principles of natural justice shall establish that they have been prejudiced in any manner due to the alleged non-compliance. Here the worker has not brought out as to how he has been prejudiced in any manner regarding the conduct of the enquiry. It is pertinent to note that the workman was given ample opportunity to peruse all documents relied on by the enquiry officer before the commencement of the enquiry and the worker's representative has scrutinised the documents and he would understand what were the documents which were going to be relied on by the enquiry officer in the enquiry. It is also pertinent to note that the Management has examined two witnesses who are none other than the Branch Manager and Accountant of the Branch in which the worker had been working. It can be seen from the evidence in Ext. M1 that the representative of the worker had cross-examined the witnesses in detail. Therefore in view of the fact that the worker's representative had given sufficient opportunity to scrutinise the documents which were relied on by the enquiry officer in the enquiry and the witnesses who were examined by the Management were the Branch Manager and the Accountant of the Branch who were cross-examined by the representative of the workman in detail and the workman has effectively and earnestly participated in the enquiry and the entire evidence was adduced in his presence and he has been offered opportunity to meet them and he has also availed of the opportunity to cross-examine the witnesses of the Management and in the absence of the evidence that the workman has been prejudiced in any manner due to the alleged non-compliance of furnishing the list of documents and list of witnesses, it cannot be held that the enquiry was vitiated for want of furnishing witness list and list of documents relied on by the Management in the enquiry. It is also pertinent to note that these objections have not been raised by the workman at the time of enquiry and he had also not filed any claim statement even though he has filed only a rejoinder raising these contentions. In these circumstances, in view of the fact that the workman was heard giving him ample opportunity to adduce evidence and to challenge the evidence of the management and the workman has participated in the enquiry effectively and earnestly and the enquiry officer has followed the principles of natural justice without creating any prejudice to the workman, I find that the enquiry is legal and valid.

13. Concerning the findings of the enquiry officer on charges, the worker had admitted that he had encashed the cheque for Rs. 2488.50. But he could not remit the amount in the Bank on account of missing of his amount. He would further admit that 8 other cheques having small amounts

were also entrusted with him and he collected the amount of Rs. 1,279.25 for the same and he remitted the same in the employer Bank. But for the amount of Rs. 2488.50 the Treasury gave him a token and insisted him to come in the afternoon. He went to the Bank in the afternoon for collecting the amount of Rs. 2488.50 and he collected the same. But unfortunately the amount was found missing on his return to the Bank, and due to the mental shock he did not go to the Bank, came to home and thereafter he was admitted in St. John's Hospital, Vyttila, Ernakulam. Hence he could not inform the Bank duly and furnish the leave application. It can be seen that even though he has contended that he was admitted in the hospital, no medical certificate was produced in his case. So also it appears to be unconvincing and unbelievable that he was admitted in the hospital due to the mental shock when the amount of Rs. 2,488.50 was lost from him. In view of the fact that the encashment of Rs. 2,488.50 was admitted by the workman and it was also admitted by the workman that it was not remitted to Bank and explanation offered by the workman for not remitting the amount to the Bank appears to be incredible and unconvincing, it has to be held that the charge of misappropriation of the amount of Rs. 2,488.50 found to be proved by the enquiry officer is sustainable. It can also be seen that the enquiry officer has entered a finding that all the four charges levelled against the workman are proved relying on the legal acceptable evidence in this case. It can also be seen that the enquiry officer has appreciated and evaluated the evidence adduced in two enquiry properly and legally. The finding of the enquiry officer cannot be considered to be perverse or without legal evidence. Hence I find that the findings of the enquiry officer are based on legal evidence and therefore I hold that the findings are valid.

14. In the result I hereby order that there was a proper and valid domestic enquiry and that the findings of the Enquiry Officer are correct".

II. The next question to be considered is what is the proper and reasonable punishment which can be imposed on the delinquent workman. The charges levelled against the workman are misappropriation, breach of trust and irregular leave record of the workman. It is found in the preliminary order that the enquiry conducted by the Enquiry Officer is legal and proper and the findings of the Enquiry Officer are also sustainable. It cannot be held that the punishment imposed on the workman is disproportionate on the gravity of the offence committed by the workman. The learned counsel for the Management would argue relying on the decision reported in 1981 LAB IC NOC 164 (KER) (T. K. Joseph v. Appellate Tribunal) that "Any leniency in proved cases of misappropriation of the revenue of public sector enterprises would only encourage the commission of such offences which in the long run would have disastrous consequences and would impair the image of such concerns in the public eye. Smallness of the amount involved by itself is no justification to ignore the commission of the offence. May be that many daring cases of malpractices and misappropriation go un-noticed or at least without being punished. That does not, however, mean that the stamp of approval of the Court should be affixed to such illegal practices in proved cases reaching the Court". In view of this decision and in view of the fact that the workman has committed the misappropriation and breach of trust the punishment imposed on him is not excessive and disproportionate.

III. As stated earlier both parties admitted that the punishment imposed on the workman by the Management is discharge from service and not dismissal. In the result an award is passed confirming the punishment imposed on Shri N. Nagendran by the Management, viz., "Discharge from service with effect from 23-1-1982."

Ernakulam,
28-2-1989.

R. RAVFENDRAN, Presiding Officer
[No. L-12012/67/86-D II(A)]

APPENDIX

Witness examined on the Management's side :

MW1 Shri C. M. Premkumar.

Exhibit marked on the Management's side :

1st. W1. The file relating to the domestic enquiry held against Shri N. Nagendran.

क्र. आ. 1248.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्राण 17 के अनुकरण में, केन्द्रीय सरकार बैंक आफ बरोडा के प्रबन्धन के संबद्ध निरोजको और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राण हुआ था।

S.O. 1248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMILNADU MADRAS

Wednesday the 29th day of March, 1989

INDUSTRIAL DISPUTE NO. 64 of 1988

(In the matter of the dispute for adjudication under Section 10(j)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Bank of Baroda, Madras-18.)

BETWEEN

The workman represented by

The Secretary, Bank of Baroda Workmen Union,
C/o. Bank of Baroda, 26, Rajaji Salai,
Madras-600001.

AND

The Regional Manager, Bank of Baroda, Regional Office, No 90 C. P. Ramaswamy Road, Alwarpet, Madras-600018.

REFERENCE :

Order No. L-12012/251/88-D.II(A), dt. 26-9-88 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Thursday, the 23rd day of March, 1989 upon perusing the

reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Srinivasakumar, Secretary of the Union appearing for the workman and of Tve. D. K. Vasal and Aruna Rao, Authorised Representatives for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This dispute between the workman and the Management of Bank of Baroda Madras-18 arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its order No. L-12012/251 88-D.H.A. dated 26-9-1988 for adjudication of the following issue :

"Whether the action of the Management of Bank of Baroda is justified in debiting one day from days of casual leave of Shri N. Ranganathan, Shroff-cum-Clerk by treating his action in not reporting for training on 9-2-1987 which was his scheduled weekly day of rest ? If not, to what relief the said workman is entitled ?"

2. The Petitioner's averment are that the Bank of Baroda, a nationalised Bank has a branch at K. K. Nagar, Madras situated in residential area with working days from Tuesday to Sunday with a weekly holiday on Monday. It has got other branches at MRC Nagar and Kolathur and has working days from Tuesday to Sunday with weekly holiday on Monday. The Bank has a Zonal Training Centre at Alwarpet to conduct training programmes to the staff members in South Zone. The Training Centre also works from Monday to Saturday and Sunday being a holiday. The members of the Training Centre are permanent employees of the Bank and are in the managerial cadre. The employees are treated as on duty during the period of training and are entitled to all benefits like T.A. and D.A. One Thiru N. Ranganathan who is at present working at K. K. Nagar Branch during the period when dispute arose. He was deputed for a training during 1986 and was asked to report to the training centre on Monday, after being relieved after the closing of working hours on Sunday. He was not allowed to avail his weekly holiday. The matter was raised before the Management by the employees to give a compensatory off or paid overtime for that day or relieved on Saturday itself, so that he can avail his weekly off on Sunday and report to training on Monday. The plea was not accepted by the Management. The employee who had been posted nominated for training availed the weekly holiday (i.e.) Monday, which is legally entitled to and reported for training on 10-2-1987, Tuesday. He also submitted a letter to the Officer-in-charge of the Training Centre informing that he was bodily exhausted after continuously working for 6 days at the Branch from 2-2-1987 to 8-2-1987 and that he was forced to avail the weekly holiday on 9-2-1987 to recoup himself and permitted to attend the training unconditionally. The employee was subsequently transferred to SIET branch after his training. The Manager of SIET Branch under instructions from the higher authorities, informed Thiru N. Ranganathan that his absence in the

training centre on 9-2-87 has been treated as casual leave and debited on his account. The unilateral action of the Management is bad in law. Subsequently, the Conciliation Officer also failed to convince the Management. Hence the reference and an award may be passed.

3. The Respondent in its counter states the training can neither be claimed as a matter of right by the employee or obligatory on the part of the Bank to impart training. The employees are understood to have remained on leave or treated on leave by the Management for the number of days they do not attend training is based on the principle that discipline must be maintained. If weekly offs are given to the participants as per choice without keeping in view the training schedule, the uniformity in imparting the training cannot be maintained and there is likelihood of the system of training being totally defeated and the system as a whole as such will also collapse. The employee Thiru Ranganathan was asked to give a leave letter to maintain discipline which is essential for the training system. It has been held by the Supreme Court that social justice is not based on contractual relations not to be enforced on the principles of contract of service and is invoked to do justice without a contract to back it. It is incorrect to state that no opportunity was given to the Petitioner. In fact he was given reasonable opportunity by the Management verbally and repeatedly requesting him to submit application for casual leave. Hence the claim may be dismissed for claiming a weekly off during the course of training and to uphold the action of the Management-Bank in debiting the casual leave of Thiru N. Ranganathan on 9-2-1988.

4. The point for determination is whether debiting of one day casual leave in the account of Thiru N. Ranganathan, Shroff-cum-Clerk on 9-2-1987 is justified; if not to what relief he is entitled.

5. By consent, Exs. W-1 to W-6 were marked. No oral evidence was adduced on either side.

6. Ex. W-1 is the copy of letter dated 7-2-1987 by the Respondent-Bank, K. K. Nagar Branch informing Thiru N. Ranganathan that he had been nominated for the training programme to be held from 9-2-1987 to 14-2-1987. As per the intimation, the employee should report for duty on 9-2-1987 at the Training Centre. On the other hand the reports for training programme on 10-2-1987 and presented a letter to the Officer-in-charge of Training Centre expressing his inability to report for training on 9-2-1987 on the ground that he was bodily exhausted after continuously working for 6 days in his Branch (Sunday working Branch) from 2-2-1987 to 8-2-1987 and since there was not rest day in between the two weeks and that he was aware that he would not be given any compensatory rest or overtime payment later. Even though he did not attend the training from 9-2-1987, he was allowed to continue training. While so, the Management by its letter dated 29-7-1987 informed the Petitioner that his absence on 9-2-1987 was treated as casual leave. It is for this action of the Respondent-Management the matter has been referred to,

7. The case of the Petitioner is since he was working in Sunday working Branch he was entitled to weekly off, namely, Monday and therefore he availed the weekly off and attended the training next day (Tuesday). This according to him is covered by Exs. W-5 and W-6, the extracts of Clause 14.15 & 11.1 of Bi-partite Settlements dated 19-10-1966 and 17-9-1984 respectively entered into between the Management-Bank and the Unions in the Banking Industry in 1966 and subsequently in 1984. In Ex. W-5 para 14.15 it has been agreed for the work done on Sundays and holidays to which he may be entitled, a workman (including peon who is asked to work as a Watchman on such days) will be paid for the entire period of work at 200% of his hourly emoluments, unless any such day happens to be a working day for him. Similarly Ex. W-6, Para 14.15/10.15 relates to a weekly off day and holidays as above. Thus reliance is made on these two Bi-partite Settlements contending since he was entitled to weekly off, namely, Monday as he was working in Sunday-working Branch he availed that off and reported for training the next day on Tuesday, for which debiting a casual leave is not proper. It is true that for a worker working in Sunday-working Branch is entitled to weekly off on Monday.

8. The authorised representative for the Management-Bank contended that the training programme is intended to be given at the instance of employees and therefore the employee has to attend on the day when training starts and he cannot contend since he is entitled to weekly off and therefore he need not attend the training on weekly off day. In other words, the Bi-partite Settlements are not applicable to the training programme and training is something which is productive and cannot be avoided on any ground. The Authorised Representative for the Petitioner-Union referred to Ex. W-4, the minutes of meeting held on 24-12-1986 with the Management-Bank and the Union. It shows the training programme for the clerical cadre is very much less and the staff members are not deputed for training even though nominated and hence it was requested by the Union that efforts may be initiated to co-ordinate attendance for trainings between Training Centre, Regional Office and the Union for better utility of the facility. It is thus seen, the employees insisted for a training to the staff and asked the Management to nominate them for that purpose. It was raised by the Union, in the same minutes that while staff from Sunday working branches are nominated for training, and the training falls on Monday, their day of weekly off, such of those employees are to be given compensatory off, since training is duty. In short, Union pressed the Management to give compensatory off in respect of those employees working in Sunday Working Branches whenever the training falls on Monday i.e. a weekly off. With respect of this minutes, the Management has decided that the matter was regretted and the Sunday working branches have already been advised accordingly. It is seen from this, the Union wanted the compensatory off whenever the employees are deputed for training on Monday which is a weekly off for them. Therefore even according to the Union they did not insist that the training should be on other days other than weekly off. Their claim relates to that whenever the Sunday working

branch Staff are sent for training which falls on Monday, their weekly off, they should be given compensatory off. Thus it is seen the employees cannot refuse to report for training on Monday which may be a weekly off for the Sunday working branches. It is their demand that if they work on Monday which is a weekly off they should be given compensatory off which would mean they should be given weekly on some other day for having undergone training. In the light of this minutes put forward by the employees themselves, the Union cannot go back and contend that in spite of the training falls on Monday, in their weekly off, they would not report for the training. The employee in this case as per the Union's demand ought to have worked on Monday and claimed compensatory off on some other day. Instead of doing the same, he absents himself at the opening day of training purposely and reports for next day under Ex. W-2 letter. He represents that he had been bodily exhausted after continuously working for six days. He forgets training is more important which is something productive and common to the interest of the employees as well as to the public. The letter Ex. W-2 shows that he was purposely absent on 9-2-1987. Of course it is pointed out that no enquiry had taken before the action taken against the Petitioner-employee by the Management-Bank. But I am at a loss to understand what is the kind of enquiry that can be contemplated against the employee. The employee himself admits that he did not report for training and availed the weekly off which is against the demand made by the Union. The action of the Management in this case is only debiting towards the leave account of the employee when especially he refused to comply with the request of the Management to give a leave letter. It is not pointed out by the Union that as per the rule or provision under which the enquiry has to be conducted even with regard to the matter when leave is debited to the account of the employee. It is all the more curious to note from the nature of work of a bank employee gets exhausted within the limited hours of work. It is a matter of common knowledge that the work of an employee of the Bank is not hazardous or exhausting as in the case of an employee in a Government service or a private firm who works beyond the duty hours for which neither he is appreciated nor overtime is paid. Above all it only shows that the Union is more concerned with the rights and not duties they owed to the public. For all these reasons, this point is found against the Petitioner.

9. In the result, an award is passed justifying the action of the Management Bank in debiting one day from days of casual leave of Thiru N. Ranganathan, Shroff-cum-Clerk in not reporting for training on 9-2-1987. There will be no order as to costs.

Dated, this 29th day of March, 1989

K. NATARAJAN, Industrial Tribunal

WITNESSES EXAMINED :

For both sides : NONE.

DOCUMENTS MARKED :

For Workman :

Ex. W-1/7-2-87—Letter from the Management Bank, K. K. Nagar Branch to Petitioner-workman Thiru N. Ranganathan nominating him for the Training (Xerox copy).

W-2/10-2-87—Reply by Petitioner-Workman to Ex. W-1 (Xerox-copy).

W-3/29-7-87—Letter from the Management-Bank to Petitioner-Workman informing that his absence on 9-2-87 has been treated as C.L. (Xerox copy).

W-4/24-12-86.—Minutes of Meeting held on 24-12-86 (., .).

W-5/24-12-86—Extract of Clause No. 14.15 of Bi-partite Settlement dt. 19-10-86 between the Management and Unions in the Banking Industry (Xerox copy).

W-6/24-12-86—Extract of Clause No. 11.1 of Bi-partite Settlement dt. 17-9-84 between the Management and Unions in the Banking Industry (Xerox copy).

For Management : NIL

K. NATARAJAN, Industrial Tribunal
[No. L-12012/251/88-D.II(A)]
Sd-

का. आ. 1249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्म-कारों के बीच, प्रत्यक्ष में निहित औद्योगिक विवाद में प्रत्यक्ष सरकार औद्योगिक अधिकरण, चंडीगढ़ के ईवेंट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

S.O. 1249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Punjab National Bank and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE SHRI M. S. NAGRA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 63/86

PARTIES :

Employers in relation to the management of Punjab National Bank.

AND

Their workman : Mohinder Pal

1263 GI/89—6.

APPEARANCES :

For the workman : Shri V. S. Malhi.

For the management : Shri Malvinder Singh.

AWARD

Dated :

On a dispute raised by Mohinder Pal against Punjab National Bank, Central Government had vide No. L-12012/110/85-D.IV(A) dated 11th December, 1986 referred to following dispute to this Tribunal :

“Whether the management of Punjab National Bank is justified in refusing promotion as teller and payment of Teller's allowance w.e.f. 29-8-1981 to Shri Mohinder Pal Clerk? If not, to what relief is the workman concerned entitled?”

2. Case of the petitioner as set up in the statement of claim is that he was posted as clerk at Nangal Branch of the Punjab National Bank. During his posting two permanent vacancies of teller attracting special allowance were filled, in violation of the Bank rules and regulation, in as much as two employees Dharam Singh Saini and Baldev Singh working in the said branch, were posted as teller, ignoring priority claim of the petitioner on the basis of length of service and experience in ledger keeping. It is contended that even another employee Shri S. P. Bhalla who did not qualify because of less experience in ledger keeping was treated as teller from 29-8-1981 and paid teller's allowance. He has prayed that Bank management may be directed to treat him as teller from 29-8-1981 and pay him tellers allowance to which he has deprived of unauthorisedly unjustifiably and against bank rules.

In its answer filed, the management took plea that two permanent vacancies of teller had arisen at Nangal Township Branch of the Bank on 8-8-1981 on which date Mohinder Pal petitioner was posted at Matchgarh Churian Branch of the Bank. Mohinder Pal however on transfer joined Nangal Branch on 23-8-1981. It is pleaded that at the relevant time i.e. 8-8-1981 when the vacancies of teller arose there was no occasion for considering his case for posting of teller in as much as he was not posted at Nangal Township. For the post of teller basis of seniority is the town as a unit. It is on the basis of seniority as prevailing on 8-8-1981 when the vacancy arose, Dharam Singh and Baldev Singh were selected and the vacancies were filled on 29-8-1981. Dharam Singh Saini was transferred out of Nangal Township and S. P. Bhalla who was senior to Mohinder Pal was posted as teller on that date.

Alongwith written statement management filed copy annexure 'A' of circular No. 417 dated 10-1-1979 of the Punjab National Bank incorporating rules regarding selection of teller under Settlement No. 2/73 dated 16-6-1973 arrived at between the Bank and the All India PNB Employees Federation.

Parties were afforded opportunity to lead evidence. Workman only preferred to lead evidence and tendered his affidavit Ex. W1 reiterating the allegations made

in the statement of claim. During his cross-examination he admitted that he had joined at Nangal on 23-8-1981 and the posts of tellers were existing prior to his joining there. In rebuttal management placed on file copy Ex. M1 of letter dated 12-12-1981 from Regional Manager to Branch Manager Nangal Township informing approval of S. P. Bhalla for his posting as teller; copy Ex. M2 of letter dated 25-8-1981 from Manager Regional Office to Branch Manager Nangal Township informing approval of names of Dharam Singh Saini and Baldev Singh; copy Ex. M3 showing payment of teller allowance to S. P. Bhalla and copy Ex. M4 showing debit of tellers allowance.

There is no dispute regarding seniority on 29-8-81 when the two permanent vacancy of teller were filled by appointing Dharam Singh Saini and Baldev Singh. While Dharam Singh Saini was senior to Mohinder Pal, Shri Baldev Singh was junior to him. Shri S. P. Bhalla though senior to all did not have one year experience in ledger keeping. Perusal of Clause 1 mentioned in circular No. 417 dated 10-1-79 in corroborating of Bipartite Settlement No. 2/73 dated 16-6-73 shows that selection of the teller is to be made on the basis of length of service with minimum qualification of one year experience in ledger keeping and in absence thereof the person with longest service as ledger keeper is to be given preference. Clause IV of the said circular provides that one year ledger keeping experience shall be counted on the date when the vacancy is filled.

Ld. Counsel for the Management argued that the seniority with town as the basis is to be considered or the date when the vacancy occurred and since Mohinder Pal petitioner was not posted at Nangal Township he had no claim to be considered for the post. In reply Ld. Counsel for the workman stated that the inter-se merits of the employee posted at the station is to be appreciated at the time of filling of the vacancy irrespective of the fact as to when the vacancy had occurred. Perusal of the copy Ex M2 of letter dated 25-8-81 from Manager Regional Office Ludhiana to Branch Manager, Nangal Township shows that in reference to letter No. 10336 dated 10-8-81 the Regional Office had conveyed approval of Dharam Singh Saini and Baldev Singh on 25-8-81 being posted as teller. Earlier to the receipt of the said communication dated 5-9-81 Mohinder Pal had joined at Nangal Township Branch of the Bank on 23-8-81. The two permanent vacancies of Teller were however filled on 29-8-81. In absence of any rule or policy decision that a person joining station after the vacancy had occurred can not be taken into consideration for the appointment, Mohinder Pal was within his right to be considered when the posts were filled on 29-8-81 by which date he had joined the station. No doubt he had joined only 6 days earlier to the filling of the vacancy at the station i.e. Nangal Township but there can be cases where vacancies remain unfilled for a considerable time and in absence of any provision to the contrary, it cannot be accepted that person joining the station after the vacancy had occurred are to be ignored for the post. The reference is returned with the findings that the Management of Punjab National Bank was not justified in refusing appointment to Shri

Mohinder Pal Clerk to the post of Teller and Mohinder Pal is entitled to be treated as Teller drawing Teller's Allowance w.e.f. 29-8-81 during the period of his tenure at the present posting at Nangal Township Branch of the Bank.

Chandigarh.

M. S. NAGRA, Presiding Officer

[No. L-12012/110/85-D. IV(A)]

या. प्रा. 1250--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में निम्नलिखित आदेशों के बीच अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 (1947 का 14) के अनुसरण में, केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

S.O. 1250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE SHRI G. S. KALRA : PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 22/88

IN THE MATTER OF DISPUTE BETWEEN :

Shri Dinesh Kumar Tyagi through State Secretary, C. B. Workers' Organisation, 43 Ixami Nagar, Suraj Kund Road, Meerut.

VERSUS

Regional Manager,

Central Bank of India,
Regional Office, Bombay Bazar,
Meerut Cantt.

APPEARANCES :

Shri Ramendra Dhawaj-for-the Union.

Shri D. D. Kapoor.—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/149/87-D. II(A) dated 7th March, 1988 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Central Bank of India, Meerut, in stopping the bill Collector allowance of Shri Dinesh Kumar Tyagi, from 20-5-80 is justified ? If not, to what relief the workman entitled to ?"

2. This dispute has been settled. The Central Bank Workers Organisation Uttar Pradesh (hereinafter referred to as the Union) which raised the dispute filed a written letter dated 19-4-89 to the effect that Shri Dinesh Kumar Tyagi has been given the cash peon allowance and now the cadre is also cash peons and there is no grievance on the part of the workman. Therefore, he may be allowed to withdraw the case. Shri Ramendra Dhawaj Vice President of the Union also made statement in the Tribunal on oath that the claims settled and allowance have been paid and there is no grievance. Hence No Dispute award is given. This reference stands disposed of accordingly.

G. S. KALRA, Presiding Officer.

20th April, 1989.

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Government for necessary action at their end.

G. S. KALRA, Presiding Officer
[No. L-12012/149/87-D. II(A)]

20th April, 1989.

का. मा. 1251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रास्थान से संबद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुसंधान में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 1-5-89 को प्राप्त हुआ था।

S.O. 1251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the United Bank of India and their workmen, which was received by the Central Government on the 1-5-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 26 of 1988

In the matter of an Industrial dispute under Section 10(1)(d) of the I. D. Act, 1947.

PARTIES :

Employers in relation to the management of United Bank of India, Bihar Sharif Branch and their workmen.

APPEARANCES :

On behalf of the employers :—Shri B. Joshi, Advocate.

On behalf of the workmen.—None.

STATE : Bihar

INDUSTRY : Banking.

Dated, Dhanbad, the 26th April, 1989

AWARD

The Govt. of India, Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to the then Central Govt. Industrial Tribunal No. 3, Dhanbad vide their Order No. L-12012/2/84 D.II(A), dated, the 21st July, 1984. But subsequently vide Ministry's Order No. L-11025/7/D.IV(B), dated, the 31st December, 1987 the said reference was transferred to this Tribunal.

SCHEDULE

"Whether the action of the management of United Bank of India, Bihar Sharif Branch in not appointing Shri Ram Bachan Sharma as Cash Clerk on permanent basis in accordance with their circular dated 24-5-82 is justified? If not, to what relief is the workman concerned entitled?"

The case of the workmen is that the concerned workman Shri Kambachan Sharma was appointed as a Cash-cum-General Clerk (for brevity CCG) in United Bank of India w.e.f. 17-12-78, the day from which Bihar Sharif branch of United Bank of India was opened. As there was no Head Cashier in the new branch, the concerned workman was working as temporary head cashier from the date of the opening of the branch, the concerned workman had filed representation before the Bank for making him permanent Head Cashier but the head office replied that as there was no policy to appoint the permanent head cashier from CCG. It representation was rejected. The management sanctioned post of one head cashier for Bihar Sharif Branch on 24-12-81, within 3 years of the opening of the Bihar Sharif branch of United Bank of India. Although sanction was made for appointment of the head cashier the concerned workman who was already working there as CCG and was in charge of head cashier was not appointed as the head cashier. A circular dated 24-5-82 was issued by the management according to which CCG who has actually worked for 3 years as Head Cashier and when a permanent cash clerk is sanctioned the CCG must be given an option to join against the said post of Head Cashier. The sanctioning of the post has reference to the period of 3 years and the crucial period as to when the sanction post is going to take effect. If the sanctioned post is going to take effect before the period of 3 years the CCG has no option and if the sanction is to take effect after 3 years of the opening of the branch CCG must be given an option for joining as Head Cashier. The other interpretation made by the management that as sanction for the post of Head Cashier was made a few days before the expiry of the period of 3 years of the opening of the branch, the CCG would not be entitled to the post of Head

Cashier runs counter to and renders negatory the requirement of completion of the period of 3 years. The sole intention of the circular is to entitle CCG who has put in 3 years as Head Cashier after its sanction is in consonance with the aforesaid interpretation made by the workmen. The management allowed the concerned workman to exercise his option of joining the sanctioned post of head cashier since he had completed 3 years and had worked against the sanctioned post of Head Cashier for about 8 months after confirmation from the Head Office and he enjoyed all the benefits for that period. The concerned workman was allowed to join the sanctioned post of Head Cashier with the concurrence of the Head office after considering all aspects of the matter. It was illegal and improper on the part of the management to revert the concerned workman to the post of CCG after he had worked against the sanctioned post of Head Cashier for about 8 months. The said act on the part of the management was in violation of principles of natural justice. As the management had no authority to revert the concerned workman to the post of CCG it has been prayed on behalf of the concerned workman that he may be reinstated as Head Cashier from the date he was reverted back as CCG.

The case of the management is that the concerned workman had no right for appointment as Cash Clerk on permanent basis in accordance with the circular bearing No. PD/67/82 dated 24-5-82 issued by the management and as such the present claim of the workmen is baseless and devoid of merit. The terms of reference clearly stipulate that the adjudication will be confined to the said circular. After nationalisation pattern of banking system has undergone a radical change and Banking facilities have been extended to the urban, and rural areas necessitating vast expansion of the branches throughout the Indian territory. To fulfil the purpose and objective of the Bank, the bank management has to employ various categories of workmen which include clerical employees with different designations but in one of the same pay scale. Certain clerical employees are required to perform certain additional duties over and above their written duties and therefore they are paid certain extra amount by way of special allowance as mentioned in the Bipartite settlement dated 19-10-66. The said bipartite settlement has been modified from time to time by settlement dated 8-11-73, 31-10-79 and 1-9-83. The said settlements govern the terms and condition of employment of workmen but do not provide any *modus operandi* for selection of Head Cashier and other incumbent to special allowance post whether on temporary basis or permanent basis. Such settlement do not also provide any procedure for selecting temporary/permanent incumbent to any post carrying special allowance. In clerical cadre certain posts namely Head Cashier, special assistant etc. carry an amount of special allowance provided in the settlement dated 19-10-66. Thus the management according to the need of the job may require clerical employee to perform additional duties and responsibilities on payment of prescribed special allowance for any period of time.

A clerk handling the cash exclusively and performing the job connected with and incidental to the cash

department is called the Cash Clerk. A clerk who performs general clerical duties is called general clerk. A cash cum General Clerk is appointed for performing the jobs relating to the cash as well as general duties of clerical staff. He is utilised either for the job relating to cash or for general clerical duties or for both as and when required by the Bank. After the sanction of the post of permanent cash clerk by order dated 24-12-81 necessary step were being taken to invite option from various cash clerks at different branches as per norms and procedure of the Bank as laid down in the said circular for posting of a permanent head cashier at Bihar Sharif branch of the Bank. After sanction of the permanent post of Cash clerk at Bihar Sharif branch on 24-12-81 the Bank in response to the representation of the concerned workmen dated 21-1-82 informed him categorically that as per the norms of the Bank a cash-cum-General clerk cannot be made Head Cashier on permanent basis. A cash-cum-general clerk may be entrusted with the job of cash or for general clerical duties or for both as special allowance if the occasions so arise. The claim of the concerned workman is misconceived and baseless in as much as the circular dated 24-5-82 does not prescribe any time limit within which a Cash clerk will be required to join after such post of Cash Clerk is sanctioned. The Bank's policy in circular dated 24-5-82 states that if a permanent cash clerk is sanctioned within 3 years from the date of opening of the branch, the cash-cum-general clerk who was earlier holding the charge of cash on temporary basis will make over the charge to the permanent cash clerk as and when he joins the branch as cash clerk against the said sanctioned vacancy. Hence if the post of Cash clerk for the Branch is sanctioned within 3 years of opening of the branch, even if the period of holding temporary charge of cash by CCG upto the date of joining of permanent cash clerk exceeds 3 years. Although the post of permanent cash clerk was sanctioned at Bihar Sharif branch on 24-12-81 the concerned workman was not entitled to be absorbed as Head Cashier permanently either as per terms of bipartite settlement or as per bank's policy. He was inadvertently converted to Cash clerk on 15-10-82 although he was not entitled for the post of cash clerk. The Bank therefore had no alternative but to give a notice to the concerned workman under Section 9A of the I. D. Act proposing the Bank's intention to put back the concerned workman to his original position of CCG with effect from 6-8-88. The action of the Bank in putting back the concerned workman in his original post of CCG and to discontinue to pay him Head Cashier's Allowance on permanent basis is bonafide and justified as it has been done as per provision of the Industrial disputes Act and with an intention to save violation of Bank's policy regarding selection of Head Cashier of a branch on the permanent basis. Although the Bank had given notice under Section 9(A) of the I.D. Act to the concerned workman but the said notice could not be made effective since the union to which the concerned workman belonged raised an industrial dispute and the matter was seized in conciliation. The failure of the conciliation report was received by the Ministry of Labour on 5-1-84. Since the matter was in conciliation the management could not take step

for selection of permanent cash clerk in permanent sanctioned vacancy at Bihar Sharif branch by way of inviting option for the cash clerk as per rules and procedure of the Bank. The process of selection of permanent cash clerk of Bihar Sharif branch was initiated after failure of the conciliation in January, 1984 and after finalisation of selection a cash clerk was posted at Bihar Sharif branch on 2-8-84 against permanent vacancy of cash clerk and in terms of the notice under Section 9(A) of the I.D. Act the concerned workman is required to hand over charge of the cash to the cash clerk already posted at Bihar Sharif branch. The notice under Section 9(A) of the I. D. Act was to be made effective from 26-8-83 but due to strike notice given by the union and initiative of the conciliation proceeding by the ALC(C) Hazaribagh and subsequent reference to the Tribunal, the said notice under Section 9(A) of the I.D. Act has been kept in abeyance. As the post of Cash clerk was sanctioned before the expiry of 3 years from the date of opening of the branch, the concerned workman is not entitled to any claim for cash clerk on permanent basis. Even prior to issuance of the circular dated 24-5-82 there was no procedure followed by the Bank for conversion of CCG to a Cash clerk. On the above plea it has been submitted on behalf of the management that it may be held that the action of the management is justified and that the concerned workman is not entitled to any relief.

Two points arise for decision in this case which are as follows :-

- (1) Whether the action of the management of the Bank in not appointing the concerned workman as Cash Clerk on permanent basis in accordance with the circular dated 24-5-82 is justified ? and
- (2) Whether the cancellation of the order of the posting of the concerned workman as Cash Clerk at Bihar Sharif branch was legal and justified ?

The management examined two witnesses and the workmen examined one witness in support of their respective case. The documents of the management are marked Ext. M-1 to M-15 and the documents of the workmen are marked Ext. W-1 to W-10.

Point No. 1

The facts of the case are admitted. The only point which is in controversy between the parties is regarding the interpretation of the Circular letter dated 24-5-82 which is marked Ext. M-8 in this case. It is admitted that the new branch of United Bank of India was opened at Bihar Sharif on 17-12-78 and the concerned workman was posted there as Cash-cum-General Clerk with effect from 17-12-78 and he was also allowed to work as temporary Head Cashier and he continued as such. It is further admitted that on 24-12-81 the post of Cash Clerk was sanctioned for Bihar Sharif branch of the Bank. The circular dated 24-5-82 came subsequent to the sanction of the post of cash clerk for Bihar Sharif branch. It will also appear that the post of Cash clerk was sanctioned

within 3 years from the date of opening of the Branch of the Bank at Bihar Sharif. Prior to 24-5-1982, it is admitted case of the parties that only Cash clerk was eligible for becoming a permanent Head Cashier. Even the concerned workman as WW-1 has accepted this position in his cross-examination. Ext. M-1 dated 20-2-81 is a circular of the Bank which shows that the service of CCG may be utilised as temporary Head Cashier in leave vacancy of the permanent Head Cashier of a branch/office provided CCG is found seniormost amongst the Cash clerk and Cash-cum-General Clerk of branch. However, if the situation of a branch so warrants that the services of CCG is required to be utilised in the general department for exigency of service then the CCG may be advised to work in the general department for that occasion only and in that case the next seniormost amongst Cash clerk and CCG of the branch may be advised to act as Head Cashier on temporary basis in the leave vacancy of permanent head cashier. Ext. M-3 dated 5-3-80 is a letter from the Asstt. General Manager, Personnel department of the Bank to the Asstt. General Manager. It shows that as per established practice and policy of the bank only a cash clerk is made permanent head cashier. The Cash-cum-General clerk are posted to work as Head cashier on temporary basis on payment of special allowance as per bipartite settlement at the initial stage in small branch where cash job and general clerical work remain low and insignificant and can be handled by one CCG. It further states that the increase of volume and responsibility both cash job and general clerical work warranting deployment of separate clerical work to handle each type of job, cash clerk is posted and made permanent head cashier in replacement of CCG. Further it provides that for the interest and necessity of work the continuance of CCG in the post of Head Cashier on temporary basis in a branch office may run into years but that does not entitle him to claim permanency to the post of head cashier as per bipartite settlement. Special allowance paid to the CCG for holding the post of Head Cashier temporarily is merely a functional allowance and in no way it means conferring of a change of designation. This letter very much clarifies the matter to show that a CCG in a new branch is appointed as Head Cashier on temporary basis on special allowance and however long period of his working on temporary basis as Head cashier may be it will not give him a right to claim permanency to the post of Head Cashier and it is only a functional allowance which is provided to the CCG for working temporarily as Head Cashier. The said position continued till prior to 24-5-82 and there is no controversy over the said position.

The circular Ext. M-8 is in respect of selection of Head Cashier and Asstt. Head Cashier issued by the head office of United Bank of India. Clause 2.4 of Ext. M-8 provides "If a permanent cash clerk is sanctioned for a newly opened branch office within 3 years from the date of opening of the branch, on joining of the said cash clerk to the said newly opened branch the CCG who was earlier holding the charge of cash of the branch on temporary basis, will make over the charge of cash to the said cash clerk posted at the branch against the sanctioned vacancy. If the permanent cash clerk is sanctioned after a

period 3 years from the date of opening of the branch and if the permanent CCG has actually worked as Head Cashier in that branch for more than 3 years on temporary basis, the said CCG will be asked to inform by the Head Office of Regional Office, as the case may be (as per proforma enclosed) as to whether he is agreeable to be converted to a cash clerk sanctioned for the branch. If he agrees in writing the charge of each of the branch is to be permanently handed over to him. On his finally taking over charge of cash of the branch, he will be entitled to Head cashier's special allowance on permanent basis. The said CCG is to be converted to the Cash clerk even if it is found that he is junior to the seniormost cash clerk opted for the post of Cash clerk at the said branch as per option Register." It further provides "If the said CCG is not interested in being converted to the cash clerk or if the cash clerk is sanctioned for the said branch within a period of 3 years the vacancy of the said clerk is to be filled up by inviting option through circular letters from amongst the cash clerk and selection is to be made on the basis of statewide seniority." Thus clause 2.4 of Ext. M-8 can be broadly divided into two parts. The first part relates to the fact that if a permanent cash clerk is sanctioned for a newly opened branch within 3 years from the date of opening of the branch, the CCG who was earlier holding the charge of cash of the branch on temporary basis has to make over charge of cash to the cash clerk posted at the branch against sanctioned vacancy. The other part deals with the position that if a permanent cash clerk is sanctioned after 3 years from the date of opening of the branch office and the permanent CCG has already worked as Head Cashier of the branch for more than 3 years on temporary basis, the said CCG will be asked as to whether he is agreeable to be converted to the post of cash clerk sanctioned for the branch and if he agrees in writing the charge of cash of the branch is to be permanently handed over to him. In the present case we find that the sanction for the post of Cash clerk was made within 3 years from the date of opening of Bihar Sharif Branch and as such the concerned workman was not entitled to be appointed as cash clerk in accordance with the clause 2.4 of the circular Ext. M-8. It will appear that as the post of Cash Clerk was sanctioned within 3 years of the opening of Bihar Sharif branch and the concerned workman had not completed 3 years of his actual work as Head Cashier in the branch on temporary basis the management could not have asked his option whether he wanted to be converted to the post of cash clerk. The point is further made clear that if the cash clerk is sanctioned for the said branch within a period of 3 years the vacancy of the cash clerk is to be filled up by inviting option through circular letters from amongst cash clerks and selection is to be made on the basis of statewide seniority. On reading of clause 2.4 of the Circular Ext. M-8 dated 24-5-82 it is clear that as the concerned workman had not completed 3 years of his work as Cash clerk on temporary basis at the time when the post of Cash clerk was sanctioned, the concerned workman was not entitled to be considered for being posted as Cash clerk against the sanctioned post of Cash clerk.

I hold therefore that the action of the management of the Bank in not appointing the concerned workman

as Cash Clerk on permanent basis in accordance with the circular dated 24-5-82 is justified.

Point No. 2

The Management, in fact vide Ext. W-9 dated 13-9-1982 had appointed the concerned workman as Head Cashier of Bihar Sharif branch provided the concerned workman agrees in writing to be converted to a cash clerk. The said letter further provides that on receipt of consent from the concerned workman an office order was to be issued to the concerned workman to work as Head Cashier on permanent basis. Ext. W-8 dated 14-10-82 is consent letter of the concerned workman agreeing to be converted to a Cash clerk sanctioned for Bihar Sharif branch. It will thus appear that the concerned workman was actually appointed as Head Cashier by the management and it was after issuance of a notice under Section 9(A) of the I.D. Act that the concerned workman was reverted back to the post of CCG and was deprived of the post of Head Cashier which he had enjoyed for sufficient number of months. Ext. M-6 dated 6-5-83 is a letter from the Asstt. General Manager of the Bank to the Regional Manager which states that it was subsequently detected that the concerned workman did not work as Head Cashier on temporary basis at Bihar Sharif branch continuously for 3 years on the date of vacancy of the Cash Clerk of the branch and that the instruction making the concerned workman as Cash clerk was in advertently communicated to the concerned workman was being rectified and accordingly the concerned workman as to be reverted to the post of CCG of the branch and the vacancy of the Cash clerk was to be filled up by seniormost cash clerk of the state selected on the basis of statewide service seniority by inviting option through circular letter. It appears from further evidence in the case that the concerned workman continued to work in the sanctioned post of the Cash Clerk because of the raising of the Industrial dispute. The workmen have filed Ext. W-1 dated 29-4-82 which is a circular regarding cancellation of the office order. The Bank issued in the said circular regarding the norms of Bank in connection with cancellation of office order. Para-1 provides that an office order once issued from the head office of the Regional Office regarding posting transfer of clerical or subordinate staff will not be cancelled, under any circumstances provided there is no administrative error in the said order. If an administrative error is detected the order may be modified/cancelled under intimation to the concerned employee stating the ground of modification/cancellation thereof. This para relates to office orders regarding posting and transfer of clerical or subordinate staff only and provides that the order of posting and transfer cannot be cancelled under any circumstances unless an administrative error was detected in the order of posting and transfer. If such error is detected the management can modify or cancel such posting of transfer under intimation to the concerned employee giving reasons for the modification cancellation of posting or transfer order.

Para-2 and 3 of Ext. W-1 appears to be inter connected and these two paragraphs are not connected with para-1 as discussed above. Para-2 provides for office orders regarding posting or transfer of clerical

or subordinate staff Para 2 deals with office order offering the post carrying special allowance namely special allowance Head Cashier, Asstt. Head Cashier etc. and office orders relating to such matters cannot be cancelled after expiry of 30 days from the date of issue of the related office orders. Para-3 deals with the representation of the selected candidates containing his own willingness to accept the post so offered to him and such representative cannot be entertained after expiry of 30 days from the date of issue of the related office order. Thus the office order relating to the posting carrying special allowance namely Head Cashier cannot be cancelled after expiry of 30 days from the date of issue of the related office order. The concerned workman was made Head Cashier vide Ext.W-9 dated 13-9-82 and he had complied with his consent accepting to be converted to a Cash clerk sanctioned for the branch and admittedly the concerned workman continued to work as Head Cashier in the sanctioned post of Cash Clerk. WW-1 has stated that he had worked as permanent head cashier for 9 months when he was informed about Section 9(A) notice issued to him. He has further stated that if a person has worked on a post attracting special allowance for a period of 30 days or more, he cannot be reverted back and the order cannot be rescinded even if there is any administrative lapses in issuing the first order giving special allowance post. This evidence of WW-1 appears to be in consonance with para-2 of Ext. W-1. As the management had not cancelled the order offering the concerned workman as Head Cashier within 30 days from the date of issue of the office order offering the post carrying special allowance of Head Cashier, the reversion of the concerned workman to the post of CCG is not in accordance with Ext. W-1 and the cancellation of the order offering the special allowance post of Head Cashier is therefore not in accordance with the circular of the management and therefore not justified. It appears therefore that although the concerned workman was not entitled to the special allowance post of Head Cashier as he had not completed 3 years as temporary cash clerk from the date of opening of the Bihar Sharif branch till the sanction of the permanent post of Cash clerk, the concerned workman could not be reverted back to the post of CCG after he had worked for more than 8 months after offering him the post of special allowance Head Cashier as per the norms of the Bank's Ext. W-1. I hold therefore that the cancellation of the order of posting of the concerned workman as Cash clerk at Bihar Sharif branch was illegal and unjustified. Accordingly I hold that the management was not justified in reverting the concerned workman to the post of CCG.

The concerned workman had already been appointed as Cash clerk on permanent basis and as held above although the said appointment of the concerned workman as cash clerk on permanent basis was not in accordance with Circular dated 24-5-82, the concerned workman could not be reverted back to the post of CCG when he had already worked for 8 months as Cash Clerk in the permanent sanctioned post and as the same was not cancelled within one month of the passing of the order offering special allowance carrying post of Head Cashier as per Ext.

W-1, the management of the Bank is directed to re-instate the concerned workman to the post of Head Cashier carrying special allowance from the date of his reversion with all arrears within one month from the date of publication of the Award.

Award is passed accordingly.

I. N. SINHA, Presiding Officer

[No. L-12012/2/84-D.II(A)]

का. सा. 1252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाईटेड बैंक आफ इंडिया के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करता है जो केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

S.O. 1252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the United Bank of India and their workmen which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE SHRI G. S. KALRA : PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 27/85

IN THE MATTER OF DISPUTE BETWEEN :

Shri Subhash Kumar Baveja S/o Shri Karan Chand Baveja R/o M-15, Jangpura Extension, New Delhi-14.

VERSUS

Regional Manager, United Bank of India, 206-208 Anand Bhawan, 16 Kasturba Gandhi Marg, New Delhi-110001

APPEARANCES :

None of the Management.

Workman in person.

AWARD

The Central Government in the Ministry of Labour vide its Order No L-12012(39)/85-D. II(A) dated 21-6-85 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of United Bank of India (North India Region) New Delhi in terminating the services of Shri Subhash Kumar Baveja, clerk by letter dated 2-7-79 is justified? If not, to what relief the workman concerned is entitled to?"

2. The facts of this case fall into a narrow compass. The workman Shri Subhash Kumer Baveja joined service of the United Bank of India (hereinafter referred to as the Management) as a typist-cum-clerk w.e.f. 26-7-1972. In the year 1978 the workman applied for leave with permission to go abroad to United States of America. Before sanctioning leave the Management asked the workman to give an undertaking that he will not exceed the applied leave period of three months. Upon furnishing such an undertaking the workman was sanctioned three months leave w.e.f. 17-4-1978. However, the workman applied for extension of his leave on medical grounds from the U.S.A. for different periods from time to time. The Management sanctioned sick leave upto 31-12-78 vide its letter dated 15-11-78 and advised the workman that no further extension of leave will not be allowed under any circumstances and he should report for duty latest by 1st January 1979 failing which it would be presumed that he was not interested in the service and had left the job on his own accord. However, the workman did not resume duty and again applied for extension of leave on medical grounds. Ultimately letter dated 9/10-1-79 was sent to the workman by the Management which reads as under :

"REGISTERED A/D.

NIR|DRM|CON|STF|576|78 January 9/10, 1979

Shri S. K. Baveja,
8417, Dixon Avenue 4,
Silver Spring, MD-20910,
U.S.A.

Dear Sir,

Re : Your prayer for extension of leave.

This has the reference to your letter dated 20th December, 1978 addressed to the Agent of our Connaught Circus Branch. We are to advise you, subsequent to the letter No. EST|830|78 dated 15-11-78 addressed to you by our Connaught Circus Branch, to resume your duties on or before 31st March, 1979 failing which your services with the Bank would be automatically terminated.

This is for your information.

Yours faithfully,

Dy. Regional Manager"

Then the Management gave notice of three months to the workman vide its letter dated 2-5-79 which reads as under :

"UNITED BANK OF INDIA

DISCIPLINE & INDUSTRIAL RELATIONS
DIVISION

REGD. WITH A/D

PD|DIR|USM|5883

Dated : 28th April 1979
2nd May, 1979

Sri S. K. Baveja,
9105, Alcona Street,
Lanham,
Md.-20801,
U.S.A.

Dear Sir,

It appears that you have been absenting from your duties for a considerable long period.

2. By your letter dated 1st March, 1976, you have intimated the Agent, Connaught Circus Branch that you are unable to resume your duties before 31-7-79 on the ground of your continued illness. In a situation like this, Bank is not in a position to avail of your service for a prolonged period.

3. It has, therefore, been decided to terminate your services by giving you three months' notice from the date of your receipt of this letter under paragraph 522(1) of Sastry Award on the ground of your continued illness.

4. We accordingly give you three months' notice and your services will automatically stand terminated at the expiry of the aforesaid notice period.

5. Please arrange to collect your dues, if any, on any working day.

Yours faithfully,

Sd/- Chief Officer,
Personnel Department."

3. The workman, however, did not resume duty and continued to send applications for extension of leave on medical ground and ultimately the Management terminated the services of the workman. In reply to one of the representations of the workman, the Management again sent letter dated 16-7-1979 which reads as under :

"UNITED BANK OF INDIA

Discipline & Industrial Relations Division

Ref. No. PD|DIR|USM|8104

The 16th July, 1979

Registered with A/D

Shri S. K. Beveja,
9105, Alcona Street,
Lanham,
MD-20801 (U.S.A.)

Dear Sir,

We are in receipt of your letter dated 27th June, 1979.

2. Please note that in the paragraph 2 of our letter No. PD|DIR|USM|5883 dated 28th April/2nd May, 1979 we have inadvertently referred to your letter dated 1st March, 1976 which should be 1st March, 1979. A copy of your letter dated 1st March, 1979 is enclosed for your ready reference.

3. Paragraph 532(I) of Sastry Award envisaged that Bank can terminate the employment of its employee other than those who have been involved in the disciplinary action for committing misconduct by giving them three month's pay and allowance in lieu thereof.

4. Since you have intimated the Bank by your letter dated 1st March, 1979 about your continued illness, the Bank having decided to terminate your service as per the above provision of Sastry Award, has given you notice of such termination vide its letter No. PDIDIR/USM/5883 dated 28th April/2nd May, 1979.

Yours faithfully,
Sd/-

Dy. Chief Officer.
Personnel Department

4. The case of the workman is that he remained genuinely sick in the United States and the termination of his services is illegal and arbitrary because no departmental enquiry was held and further that it was a malafide act on the part of the Management. Hence he had sought his reinstatement with continuity of service and full back wages.

5. The Management has controverted the claim and allegation of the workman and submitted that the services of the workman have been terminated on the ground of continued illness and it does not amount to retrenchment and its action is legal and justified and bona fide and same cannot be interfered with because it does not suffer from any vice or infirmity. It has further been stated that the Management had specific information that the workman would ever stay the leave applied for and for this reason the workman was asked to furnish undertaking not to extend his leave beyond the sanctioned period of three months.

6. The workman himself has placed on record a number of applications and medical certificates in order to prove that he was genuinely sick during his stay in the United States. He has placed on record a medical certificate dated 31-3-1984 (Ex. W-31) wherein he was declared to be fit to travel and resume his duties. This means that the workman remained sick at least w.e.f. 17-7-1978 when his sanctioned period of leave was to expire till 31-3-84. By all standards, this would amount to continued ill-health and the Management being a service oriented organisation could not have waited indefinitely for the workman to recover and return from the United States. Section 2(e) of the I.D. Act defines retrenchment as under :

“(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) Voluntary retirement of the workman : or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ;
- (c) termination of the service of a workman on the ground of continued ill-health”.

7. It is, therefore, abundantly clear that termination of the services of the workman on ground of

continued ill health does not amount to retrenchment and consequently the workman is not entitled to any of the protections provided under Chapter VA of the Act. However, even to terminate service on ground of continued illness, perhaps a domestic enquiry was called for. But in the present case it is admitted case of the workman himself that his absence was due to prolonged and continuous illness and, therefore, there was no scope for any further enquiry. The facts of this case give an impression that the initial apprehension of the Management that the workman was likely to overstay the leave applied for initially, was well founded. Having over stayed in the U.S.A. for over six years, the workman now wants to be reinstated in service with the benefit of continuity of service and full back wages. It appears to be a clear case of abuse of the process of the court. The workman cannot be allowed to eat the cake and have it too.

8. In view of the discussion made above, the action of the Management is quite legal and justified and the workman is not entitled to any relief. This reference stands disposed of accordingly.

G. S. KALRA, Presiding Officer.

13th April, 1989.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

G. S. KALRA, Presiding Officer.

13th April, 1989.

[No. L-12012/39/85-D.II(A)]

का. आ. 1253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबन्धन से संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के पैरा 17 को प्रकाशित करती है, जो केन्द्रीय सरकार का 28-4-89 को प्राप्त हुआ था।

S. O. 1253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL TRI-
BUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. I.D. 22/87

PARTIES :

Employers in relation to the management of
Central Bank of India.

AND

ANNEXURE

Their workmen:

APPEARANCES :

For the workmen—Shri R. D. Chaudhary.

For the Management—Shri Yogesh Jain.

AWARD

Dated : 12-4-1989

On a dispute raised by workmen of Central Bank of India, Central Govt. had vide No. L-12011/29/86-D.II(A) dated 16th April 1987 referred the following dispute to this Tribunal :

“Whether the action of management of Central Bank of India in not keeping the prescribed quota for promotion in Jr. Management grade scale I in Amritsar and Ambala selection areas in violation of promotion policy agreement dated 20-12-1975 and modified on 25-2-1984/23-4-1984 is justified ? If not, to what relief the senior most clerks in the said selection areas are entitled?”

2. During the pendency of the proceedings Shri N. K. Jain, General Secretary, Central Bank of India Employees Union (Punjab) had through his letter dated 16-3-1989 requested this Tribunal to withdraw the reference since an understanding has been reached with the management in respect of implementation of the promotion policy. In view of the same a No Dispute Award is returned.

Chandigarh.

12-4-1989.

M. S. NAGRA, Presiding Officer

[No. L-12011/29/86-DII(A)]

N. K. VERMA, Desk Officer

नई दिल्ली, 9 मई, 1989

का. प्र. 1254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धनक्षेत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28 अप्रैल, 1989 को प्राप्त हुआ था।

New Delhi, the 9th May, 1989

S.O. 1254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 28th April, 1989.

BEFORE SHRI M. S. NOGRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 87/88

PARTIES :

Employers in relation to the management of State Bank of India.

AND

Their workman—A. C. Katoch

APPEARANCES :

For the workman—Shri J. G. Verma.

For the management—Shri D. P. Garg.

INDUSTRY : Banking STATE : Himachal Pradesh.

AWARD

Dated : 12-4-1989

On a dispute raised by A. C. Katoch against State Bank of India, Central Govt. had vide No. L-12012/226/88-D-3(A) dated 16-9-1988 referred the following dispute to this Tribunal :

“Whether the action of the State Bank of India in denying the right to the post of teller to Shri A. K. Katoch clerk-cum-cashier at their Palampur Branch from May 1986 is legal and justified ? If not to what relief is the concerned workman entitled and from what date?”

2. Notice of the Reference was issued to the parties and Sri J. G. Verma in its capacity as representative of the workman filed statement of claim. Case was adjourned for filing of reply by the management. Management has placed on the file photocopy of letter dated 11-3-1989 from the workman requesting that his case may be treated as withdrawn. In view of the same a No Dispute Award is returned.

Chandigarh.

12-4-1989.

M. S. NAGRA, Presiding Officer.

[No. L-12012/226/88-DIII(A)]

P. V. SREEDHARAN, Desk Officer

नई दिल्ली, 9 मई, 1989

का. प्र. 1255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार व भारतीय राज्य निगम, पूना के प्रबन्धनक्षेत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं 2, बम्बई, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-89 को प्राप्त हुआ था।

New Delhi, the 9th May, 1989

S.O. 1255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India, Pune and their workmen, which was received by the Central Government on the 1-5-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/13 of 1988

PARTIES :

Employers in relation to the Management of Food Corporation of India, Pune.

AND

Their Workmen

APPEARANCES :

For the Employers—Shri B. M. Masurkar, Advocate.

for the Workmen—Shri A. Pankajakshan, Coord Secretary, AITUFCE&W, Pune.

INDUSTRY : Food Corporation STATE: Maharashtra

Bombay, dated the 14th April, 1989

AWARD

The Central Government by their Order No. L-42012/9/86-D.V/D.II(B) dated 17-3-1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

“Whether the demand of Smt. Laxmibai H. Poojari, casual labour employed by the District Manager, Food Corporation of India, Pune for (a) payment of wages from 6-1-84 to 20-3-85 (b) confirming her service on the post of peon/messenger/labour in the pay scale of Rs. 210-290 are justified ? If yes, to what relief Smt. Poojari is entitled?”

2. The case of the workman lady Smt. L. H. Poojari, as disclosed from the statement of claim (Ex. 2/W) filed by the Co-ordination Secretary, AITUFCE & W, Pune, on her behalf, in short, is thus:—

The said lady Smt. Poojari has been working as a casual labour in the office of District Manager, Food Corporation of India, Pune, on daily wages from 24-3-1975. On 5-12-1984 she was asked by the management not to attend for her duty from the

next day i.e. 6-12-1984 onwards. The dispute was thereafter taken to the Assistant Labour Commissioner (C), Pune. Thereafter the management directed the said lady to report for her duty, and she resumed her duty in the said office at Pune on 22-3-1985. It is the case of the Union that the action of the management in terminating the service of the said lady from 6-12-1984 is in contravention of Sections 25B and 25F of the Industrial Disputes Act. As such she is entitled for her wages for the period from 6-12-1984 to 21-3-1985. She is also entitled for her regular appointment in the lowest grade of category IV employees in the pay scale of Rs. 210-290 as a Peon/Messenger, taking into consideration her service with the management for more than 10 years prior to 1985. The said lady is in service of the Food Corporation of India during various periods for over 10 years and as such her work is not of casual nature, and that the work for which she was employed was of regular nature. The F.C.I. has filled up a large number of vacancies of Depot Messengers in 1984 through the Employment Exchange, but the case of the said lady was not considered by it. As per the decision of the Hon'ble Bombay High Court dated 26-10-83, and also as per the directions of the Supreme Court dated 24-9-1984, respectively passed in the writ petition and Special Leave Petition, the principles of fair labour practice require that the casual labourers who have completed six months of service should be treated as in regular service, and in the present case, from 29-9-1975. The said lady is entitled for the wages from 6-12-84 to 21-3-1985 during which period her services were terminated. The said Union, therefore, prayed that this Tribunal should direct the Food Corporation of India to regularise the service of Smt. Poojari in the post of Peon/Depot Messenger from 20-9-1975 in the scale of Rs. 210-290, and to grant arrears of wages and allowance for regular service from 24-9-1975 onwards and also to grant her wages for the period 6-12-1984 to 21-3-1985 on regular scale.

3. The Senior Manager of the Food Corporation of India, Pune, by his written statement (Ex. 3) denied the claim of the said Union and in substance contended thus:—

Smt. Laximibai Poojari was engaged as a Casual Labour on daily wage basis. As she was working purely on casual basis the question of regularisation of her service does not arise, and the principle of 'no work no pay' applies. She was not qualified for the employment with the F.C.I. as a Peon. As she could not be provided with work from 6-12-1984, her employment in the Corporation came to an end. Thereafter, when the work was available, she was again engaged from 22-3-1985.

(ii) She was, further, overaged for regularisation in the service. The claim for wages for the period from 6-12-1984 to 21-3-1985 is not justified as she was working purely on casual basis. Smt. Poojari was working purely on casual basis. Smt. Poojari was not said to be in continuous service of the Corporation. Smt. Poojari has been all along from the year 1975 working as a casual labourer, and there

was no regular post for her and she was not appointed against any existing post of Peon or otherwise. For regular appointment, there must be a post existing. Then only a person can be appointed in that post on regular basis. Uptil now no post exists for absorption of Smt. Poojari, and a new post will have to be created for her prospectively in case this Tribunal directs the F.C.I. to appoint her on a regular basis, but such appointment can be made only prospectively and not retrospectively from the original date of her appointment. The FCI, therefore, prayed that the prayer of the employee Smt. Poojari be rejected.

4. The Issues framed at Ex. 4 are :—

- (1) Whether the termination of the services of the work woman Smt. Laxmibai H. Poojari by the Food Corporation of India w.e.f. 6-12-1984 is in contravention of the provisions contained in Section 25-B and 25-F of the Industrial Disputes Act ?
 - (2) Whether she is entitled to the wages of the period from 6-12-84 to 21-3-85?
 - (3) Whether the applicant lady is entitled for regularisation of her service in the post of Peon/Depot Messenger w.e.f. 20-9-1975 in the pay scale of Rs. 210-290 ?
 - (4) Whether she is entitled to the back wages due from 20-9-1975?
 - (5) To what relief the applicant is entitled ?
 - (6) What Award?
5. My findings on the above Issues are :—
- (1) Yes
 - (2) Yes
 - (3) Yes
 - (4) Yes
 - (5) As per Award below.
 - (6) As per Award.

REASONS

ISSUE NO. 1 :

6. In this case no oral evidence was led on behalf of either of the parties. The parties were heard in support of their respective contentions. It is an admitted fact that the lady Smt. Laxmibai H. Poojari was appointed in the service of the Food Corporation of India from 24-3-1975. According to the management of the F.C.I. she was appointed only as a Casual worker and she was never appointed on regular basis. Even then as per the contentions of the F.C.I. in para 10 of their written statement (Ex. 3), "Smt. Poojari, has been all along from the year 1975 working as a casual labourer and there was no regular post for her". Thus she is working with the F.C.I. since 1975. The conciliation proceedings were held before the Assistant Labour Commissioner (C). A copy of the conciliation proceeding is at Ex. 6. It is seen from those proceedings that the representative of the management had stated

before the Assistant Labour Commissioner that the said lady had not worked continuously, but on every Sunday she was given a break without pay. It is quite clear from the above statement that since 1975 she is in service of the F.C.I. with a break on Sundays in her service. Even then she can be considered as in continuous service of the F.C.I. for a period of one year as contemplated under Section 25-B of the Industrial Disputes Act, as it is quite clear that even if she had remained absent on every Sunday, she had worked for more than 240 days during any year since 1975. It is an admitted fact that after having worked since 1975 she was told on 5-12-1984 not to attend to her duty from 6-12-84. Thus, at that time she was in continuous service of nine years with the F.C.I. even though as a casual labourer. As such the necessary provisions of Section 25F should have been followed and she should have been paid one month's wages and the necessary re-trenchment compensation before her services were terminated with effect from 6-12-1984. Admittedly no such wages have been paid to her. Therefore, Issue No. 1 is found in the affirmative.

ISSUES NOS. 2 TO 5

7. The main claim of the said lady is that her service should be regularised from 20-9-1975 in the post of Peon/Depot Messenger in the scale of Rs. 210-290. According to the F.C.I., as she has been appointed only as a Casual labourer and she did not possess the necessary educational qualifications etc. and there is no permanent post existing, she is not entitled to claim for a regular post. It is not disputed that she is in service of the F.C.I. even again from 22-3-1985, and as noted above, she was in service of the F.C.I. since 1975. As such, she is in continuous service of the F.C.I. from 1975 till to-day. Even after her re-appointment in March, 1985 she has already completed her continuous service of one year, and much more than that.

8. In this connection the observations made by the Supreme Court in the case reported in (1986) 1 Supreme Court Cases 637 between Dhirendra Chamoli and another and State of U.P. are relevant. This was a case regarding the services of casual workers on daily wages basis engaged by the Government in different Nehru Yuvak Kendras in the country. The services of such casual labourers were directed to be regularised. The observations of the Supreme Court are :—

"We therefore allow the writ petitions and make the rule absolute and direct the Central Govt. to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as Class IV employees, the same salary and conditions of service as are being received by Class IV employees except regularisation which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendras, so that these persons can be regularised. It is not at all desirable that any management and particularly the Central Government should

continue to employ persons on casual basis in organisations which have been in existence for over 12 years. The salary and allowances of Class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed. The Government of India will pay to the petitioners costs of the writ petitions fixed at a lump sum of Rs. 1000".

9. Again in the case between the Daily Rated Casual Labour employed under P&T Dept. and the Union of India and others reported in 1988 (I) LLJ page 370 the observations of the Supreme Court are material. In this case, the daily rated casual labour in the posts and Telegraphs Department who were working for 10 years as casual labourers claimed to pay them salary and allowances and other benefits on par with permanent employees and to direct the Union of India to regularise the services of casual labourers who had been in continuous service for more than six months. The Hon'ble Supreme Court had passed an order that a scheme on rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Post and Telegraphs Dept. be prepared within eight months and arrears of wages payable to casual workers be paid within four months.

10. Taking into consideration the guidelines laid down by the Supreme Court as above, I find that the demand of the said lady for the regularisation of her services with effect from 20-9-1975 is quite just and proper. Even though she was retrenched for a few months from December, 1984 to March 1985, she was again taken in service in March 1985, and she is still in service of the F.C.I. As such, it must be held that she is in continuous service of the F.C.I from March 1975 till today. Therefore, even though her services were terminated for 3½ months, it must be said that she is in continuous service of the F.C.I from March, 1975 till to-day, and as such she is entitled to the wages of the period during which her services were terminated. Therefore, the F.C.I must pay her the wages due from 6-12-1984 to 21-3-1985. The said lady has claimed her wages in the scale of Rs. 210-290 with effect from 20-9-1975. I find that after regularisation of her service she must be paid the wages which another employee of her rank but who was a regular employee, then drawing. She is also entitled to the difference of wages of a regular post of her rank with effect from the date she was first appointed in the service of the F.C.I. It was contented on behalf of the management that she did not possess the required educational qualification, and she was not within the prescribed age limit. However it is seen from the letter dated 6-5-1987 (Ex. 7) that the conditions of educational qualification etc. can be condoned in certain cases, in case the concerned employee has completed three months service as on 2-5-1986. As per this letter, the said condition can not be condoned in case of the casual labourer. However, as noted above, as she has already completed more than 10 years, she cannot be regarded as a casual labourer, but she must be deemed to be a regular employee from September, 1975 and as such 1263 GI/89—8,

the educational condition which created an obstacle in regularising her service can be relaxed by the F.C.I. Therefore, for the above said reasons, findings of Issues Nos. 2 to 5 are in the affirmative. She is entitled to the relief as discussed above.

ISSUE No. 6

Hence, the following Award is passed.

- (i) The demand of the lady Smt. Laxmibhai H. Poojari in question is substantially just and proper.
- (ii) The management of Food Corporation of India is directed to regularise her service with effect from 20-9-1975 and her wages be paid on the basis of a regular employee of her rank since that date.
- (iii) The management to pay the necessary difference of wages, due since September 1975 onwards.
- (iv) The management to pay her wages of the period from 6-12-1984 to 21-3-1985.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer
[No. L-42012(9)/86-D.V/D. II (B)]

का. प्र. 1256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व नैसर्ग सिंगरानी कॉन्सिडरीज कम्पनी लि., एरिया नं. 1, गोदावरी खानी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अरुंधत में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

S.O. 1256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S. C. Co. Ltd., Area I, Godavari Khani and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
ANDHRA PRADESH, HYDERABAD

Dated, 17th April, 1989

INDUSTRIAL DISPUTE NO. 12 OF 1988

BETWEEN :

The Workmen of S. C. Company Limited,
Area-I, Godavarikhani, Karimnagar District.
(A. P.)

AND

The Management of M/s. S. C. Company Limited, Area-I, Godavarikhani, Karimnagar District. (A.P.)

APPEARANCES :

Sri K. Srinivasa Murthy and Miss. G. Sudha,
Representatives for the Management.
None for the Workmen.

AWARD

The Government of India in the Ministry of Labour, New Delhi, by its orders No. L-21012/90/86-D.III(B) dated 17-12-1987, referred to this Industrial Tribunal an Industrial Dispute existing between the employers in relation to the management of M/s. Singareni Collieries Company Limited, Area-I, Godavarikhani and their workmen for adjudication under Clause (d) of sub-Section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) with a direction to give the Award within a period of three months.

2. The order of the Government of India was received on 22-12-1987 and after its scrutiny it was found that the schedule was not in order and hence the Government of India was requested to amend the reference and the Schedule. So the Government of India issued No. L-21012/90/86 D.III(B), dated 8-1-1988 suitably amending the schedule which is as follows :—

SCHEDULE

“Whether the action of the management of M/s. Singareni Collieries Company Ltd., Area-I, P. O. Godavarikhani, Dist. Karimnagar (A.P.) in denying promotion to Shri B. Joseph, Blacksmith, Gdk. 5A Incline Category IV to Category V is justified ? If not, to what relief the workman concerned is entitled to ?

The amended reference was received in this Tribunal on 20-1-1988 and the dispute was registered as Industrial dispute No. 12 of 1988 on the file of this Tribunal.

3. Notice was issued to the parties directing the Vice-President of Singareni Miners and Engineering Workers' Union No. 2239, Tilaknagar, P. O. Godavarikhani 505214 District Karimnagar (A.P.) to file the Claims Statement on or before 22-2-1988 while serving a copy of it on the Management. The Notice was served on the parties on 22-2-1988, no claims statement was filed by the workmen. The parties were called absent and the dispute was adjourned to 10-3-1988. On 10-3-1988 the workers were called absent. Sri K. Srinivasa Murthy offered to file his Vakalat for Management and the dispute was adjourned to 6-4-88 for filing claims statement of the workmen and Vakalat for the Management. From 6-4-88 the dispute was adjourned to 2-5-1988. 20-5-88 and 24-6-88. Notice was ordered to the concerned workmen for filing the Claims Statement on 24-6-88. The acknowledgement from the workmen was not received so the dispute was adjourned to

4-7-88 for awaiting postal acknowledgement. From 4-7-88 it was adjourned to 20-7-88. On 20-7-88 again notice was ordered to the workmen and the dispute was adjourned to 25-8-88. The notice was received by the workmen and their representative but they did not appear before this Tribunal and again the dispute was adjourned to 20-9-88. On 20-9-88 also the workmen did not file any claims statement and they were Set Exparte. The Management was directed to file its counter and the dispute was adjourned to 22-10-1988. On 22-10-1988 the Management filed its Counter and the dispute was adjourned to 14-11-88 for filing documents. From 14-11-88 it was adjourned to 15-11-88, 14-12-88, 30-1-89 and 3-3-89. On 3-3-89 when the dispute was called, it was found that the Management filed certain documents in the office on 2-3-89 and the dispute was adjourned to 29-3-89, 10-4-89 and 17-4-89. On all above the dates of adjournments, the workmen and his representative neither appeared nor filed their Claims Statement. Workman remained exparte.

4. In this dispute the management filed its counter justifying its action in not promoting the workman. B. Joseph from Category IV to Category V. It also filed certain documents relating to this dispute.

5. I have carefully perused the records in this dispute, i.e. the Counter and the documents filed by the Management. This industrial dispute was espoused by the Union at the instance of the workman. It is the responsibility of the workman and its representative to prosecute his dispute diligently. In the absence of any evidence oral and documentary adduced by the Workman, I am of the firm opinion that the denial of promotion by the Management to Shri B. Joseph blacksmith Gdk. 5-A Incline from Category IV to Category V was fully justified and the workman is not entitled to any relief. An Award is, therefore, passed accordingly.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 17th day of April, 1989.

A. HANUMANTHU, Industrial Tribunal

Appendix of Evidence.

NIL

[No. L-21012(90)/86-D. III. B/IR(C-II)]

का. मा. 1257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार व बैस्टन कोलफील्ड्स लि., बैल्लारपुर कोमियरी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण में, 1, दम्बई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 5-5-89 को प्राप्त हुआ था।

S.O. 1257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Bombay as shown in the Annexure, in the industrial

dispute between the employers in relation to the management of Western Coalfields Ltd. Bellarpur Colliery and their workmen, which was received by the Central Government on the 5-5-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

PRESENT :

Mr. Justice M. S. Jamdar, Presiding Officer.

REFERENCE NO. CGIT-4 OF 1989

PARTIES :

Employers in relation to the management of Western Coalfields Limited (Bellarpur Colliery).

AND

Their workmen

APPEARANCES :

For the Management : Mr. G. K. Shrivastava, Personnel Officer and Mr. P. S. Nair, Advocate.

Industry : Coalfields . State : Maharashtra

Bombay, the 19th April, 1989

AWARD

The Central Government in exercise of the powers conferred by section 10(1)(d) of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication :—

“Whether the verbal dismissal of Shri Siyaram Yadav, Casual Labourer, Ballarpur Sub Area of M/s. W. C. Ltd., P.O. Ballarpur, Dist. Chandrapur by the Management of Deputy General Manager, Ballarpur Sub Area from January 1985, is legal and justified ? If not, to what relief the workman concerned is entitled ?”

2. The workman did not file any statement of claim and remained absent though duly served with notice of hearing. The matter was therefore posted for ex-parte hearing on 30-3-1989, at Nagpur. On the said date the management filed an application stating that the dispute has been settled between the parties and prayed for time to file the Memorandum of Settlement. The request was granted and the matter was adjourned for filing the Memorandum of Settlement to 17-4-1989, at Bombay on which date both the parties remained absent. However, today the Personnel Officer of the first party filed the Memorandum of Settlement and prayed for an award in terms of the Settlement.

3. The terms of settlement are as follows :—

“1. That Shri Siyaram Yadao, Ex-Casual Labourer, who had put in 272 days of attendance during the year 1984, will be given employment as General Mazdoor Cat. 1 of NCWA-III at Sasti Opencast Mine of Ballarpur Area.

2. That the employment as agreed in Para (1) will be implemented within 30 days.
3. That this will be full and final settlement of this dispute and Shri Siyaram Yadao will have no claim whatsoever for the period of his idleness.
4. The employment will be given subject to his medical fitness.
5. Both the parties agreed to file this memorandum of settlement before the Hon'ble Central Government Industrial Tribunal, Bombay with a view to close the reference.

3. The settlement is quite fair and is in the best interest of the concerned workman. I therefore accept the settlement and pass an award in terms of the settlement. Award accordingly.

M. S. JAMDAR, Presiding Officer.

[No. L-22012(84)/88-D. IV. B/I R(C-II)]

क. अ. 1258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार व भारतीय खाद्य निगम के प्रबन्धन से सम्बद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-89 को प्राप्त हुआ था।

S.O. 1258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 92/87

PARTIES :

Employers in relation to the management of Food Corporation of India;

AND

Their workman : Vinod Kumar

APPEARANCES :

For the workman : None.

For the management : Shri N. K. Zakhmi.

INDUSTRY : FCI

STATE : Punjab

AWARD

Dated, the 10th April, 1989

On a dispute raised by workman Vinod Kumar against Food Corporation of India, Central Govt. had been pleased to make the following reference

vide No. L-42012/123/86-D. II(B) dated 20th October 1987 to this Tribunal :

"Whether the action of the management of Food Corporation of India represented through the Managing Director, Zonal Manager, Sr. Regional Manager and District Manager in not regularising the services of Shri Vinod Kumar, Casual watchman is justified. If not to what relief the workman is entitled to and from what date ?"

2. None has put up appearance on behalf of the workman. Workman was represented on the last date by Shri P. K. Singla when the proceedings were adjourned from 14-3-1989 for today i.e. 10-4-1989. Reference proceedings are, therefore, filed for want of prosecution. Central Govt. be informed accordingly.

Sd/-

M. S. NAGRA, Presiding Officer

[No. L-42012(123)/86-D. II(B)|IR (C-II)]

R. K. GUPTA, Desk Officer

नई दिल्ली, 12 मई, 1989

का. आ. 1259 --कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) की धारा 5 क की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारत सरकार के श्रम मंत्रालय की तारीख 18 मिनस्वर, 1985 की अधिसूचना सं. का. आ. 677 (अ) में निम्नलिखित संशोधन करती है।

उक्त अधिसूचना में "सदस्य" शीर्षक के अन्तर्गत

(i) क्रमांक 27 के बाद निम्नलिखित जोड़ा जाएगा, प्रस्तावित:-

- | | | |
|---|---|---|
| <p>"27--क. श्री एस.एन. भोरुका, भोरुका स्टील लिमिटेड पांचवा तल, हितानन्द, -II 26/1 रेलवे रोड, बंगलूर-560001</p> <p>27--ख. श्री एस.बी. जैन सलाहकार (एफ और जी थार.) स्टैंडिंग काउन्सिल आफ पब्लिक इंटर प्राइजिज स्कोप कॉम्प्लेक्स 7, लोदी रोड, नई दिल्ली-110003</p> <p>27--ग. श्री के. कानन, सैनेटरी इम्प्लायर्स फेडरेशन आफ साउथ इंडिया, 41, कस्तूरबा रंगा राड, अस्सोरपेट, मद्रास 600018</p> <p>27--घ. श्री सी. के. हजारी, सलाहकार एस्कोर्ट्स लि. डी-910 न्यू फ्रेंड्स कॉलोनी, नई दिल्ली-110005</p> | } | <p>नियोजकों संगठनों से परामर्श करके केन्द्रीय सरकार द्वारा नियुक्त नियोजक प्रतिनिधि</p> |
|---|---|---|

(ii) क्रमांक 33 के बाद निम्नलिखित जोड़े जायेंगे प्रस्तावित:-

- | | | |
|--|---|--|
| <p>"34. श्री बी पी मराक्कर, प्रेजिडेंट इंडियन नेशनल ट्रेड यूनियन कांग्रेस कश्मिर शाखा, इटावावाली कंचन-24</p> | } | <p>से परामर्श करके केन्द्रीय सरकार द्वारा नियुक्त नियोजक प्रतिनिधि</p> |
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| <p>35. श्री हंसमुख भई दावे, एच.बं.सेट, गायत्री राजपूत पारा (बी.एम.एस) मेन रोड, राजकोट-360001</p> <p>36. श्री ई. बालानन्दन, सैन्टर आफ इंडियन ट्रेड यूनियन्स 6--तानवटीरा रोड, नई दिल्ली</p> <p>37. श्री फटिक घोष, सैनेटरी, भाल इंडिया कमेटी यू.टी.यू.सी. लेनिन गार्डन 77/2/1 लेनिन गार्डन (प्रथम तल) कलकत्ता 700013</p> | } | <p>कर्मचारियों के संगठनों से परामर्श करके केन्द्रीय सरकार द्वारा नियुक्त कर्मचारी प्रतिनिधि</p> |
|---|---|---|
38. केन्द्रीय भविष्य निधि आयुक्त, नई दिल्ली

[सं. बी.-20012 (1)/88--एस. एम. II(अण्ड)]

ए. के. भट्टाचार्य, अवर सचिव

New Delhi, the 12th May, 1989

S.O. 1259. - In exercise of the powers conferred by sub-section (1) of section 5A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (15 of 1952), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour No. S.O. 677(E), dated the 18th September, 1955.

In the said notification under the heading "Members" --

(i) after Sl. No. 27, the following shall be inserted, namely :-

- | | | |
|--|---|---|
| <p>"27-A. Mr. S.N. Agarwal, Bhorka Steel Limited, 5th Floor, Hitananda II, 26/1, Leveille Road Bangalore-560001.</p> <p>27-B. Mr. S.B. Jain, Adviser (F & GR) Standing Conference of Public Enterprises SCOPE COMPLEX, Lodi Road, New Delhi-110003</p> <p>27-C. Shri N. Kannan, Secretary, Employers' Federation of Southern India 41 Kasturba Ranga Road, Alwarpet, Madras-600018.</p> <p>27-D. Shri C.K. Hazar, Advisor, Escorts Ltd., D-910 New Friends Colony, New Delhi-110065.</p> | } | <p>Representative of Employees appointed by the Central Government in consultation with the Organisations of Employers.</p> |
|--|---|---|

(ii) After Sl. No. 33, the following shall be inserted, namely:-

- | | | |
|---|---|--|
| <p>"34. Shri V.P. Marakkar, President, Indian National Trade Union Congress, Kerala Branch, Edappally, Cochin-24.</p> | } | <p>से परामर्श करके केन्द्रीय सरकार द्वारा नियुक्त नियोजक प्रतिनिधि</p> |
|---|---|--|

35. Shri Hasmukh Bha Dave
Advocate, (B.M.S.)
Gayatri, Rajput Para
Main Road,
Rajkot-360001.
Representatives of
employees appointed
by the Central Go-
vernment in consul-
tation with the Orga-
nisation of Employees.
36. Shri E. B. Janardan,
Central of Indian Trade Unions
6, Talkatora Road,
New Delhi.
37. Shri Fatick Ghosh,
Secretary,
All India Committee,
U.T.U.C. (Lenin Sarani),
77/2/1, Lenin Saran (1st Floor),
Calcutta-700013."
38. The Central Provident Fund Member Ex-Officio,
Commissioner,
New Delhi.

[No. V.20012(1)/88-SS. II(P)
A.K. BHATTARAI, Under Secy.

नई दिल्ली, 12 मई, 1989

का. आ. 1260.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डी आर एम, पश्चिम रेलवे, राजकोट के प्रबन्धकों से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण अहमदाबाद के पंचपट का प्रकाशन करती है जो केन्द्रीय सरकार को 28-4-89 का प्राप्त हुआ था।

New Delhi, the 12th May, 1989

S.O. 1260.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of D.R.M., Western Railway, Rajkot and their workmen, which was received by the Central Govt. on the 28-4-1989.

ANNEXURE

BEFORE SHRI G. S. BAROT, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL) AT AHMEDABAD

Reference (ITC) No. 10 of 1983

ADJUDICATION

BETWEEN

The District Railway Manager, Western Railway, Rajkot. First Party

AND

The workmen employed under it Second Party
In the matter of granting special pay to Bariwalas.

APPEARANCES :

Shri Satramdas, A.P.O. for the First Party. Shri B. K. Sharma, Secretary, Paschim Railway Karamchari Parishad for the Second Party.

AWARD

This industrial dispute between the District Railway Manager, Western Railway, Rajkot and the workmen employed under him has been referred to me for adjudication as a Presiding Officer under Section 10 of the Industrial Disputes Act, 1947, by the Ministry of Labour and Rehabilitation Department's No. L-41011(16)/83-D.I.B., dated 9-12-1983.

2. The dispute relates to a single demand which is as under :—

"Whether the demand of the workmen for payment of shunting allowance to Bariwalas at Mehsana in Western Railway is justified? If so, to what relief the workmen are entitled?"

3. Paschim Railway Karamchari Parishad (hereinafter referred to as 'the Union') has by its statement of claim Ex. 2 contended that the Bariwala who is a member of the Shunting Crew handles a Bari i.e. an iron rod of 12½ Kgs. for loosening, aligning and tightening the hooks and couplings of the wagons; that Bariwala initiates the shunting operations by loosening the hooks and coupling then the engine goes with the load to release it on specific line for forming the train; that there also he has to see that hooks and couplings are in one alignment to receive the coming wagon; that this goes on till the shunting is over; that thereafter Bariwala has to close the shunting operation by tightening the hooks and couplings. The union has emphatically urged that the shunting starts with the operation of a Bariwala and ends with the operation of Bariwala. In spite of this special pay of Rs. 10/- p.m. granted to shunting porter, shuntman, skidman, skidporter is not granted to Bariwala. It is contended that the shuntman will not function until and unless the Bariwala loosen the couplings and hooks. It is, therefore, prayed that shunting allowance at the rate of 10/- p.m. be paid to Bariwala.

4. The Divisional Railway Manager has filed the written statement Ex. 4 denying the various contentions taken in the statement of claim Ex. 2. It is contended that the Bariwala has to carry the iron rod (Bari) only when he is required by Pointsman to hammer the hook of wagon coupling for tightening the same. The job of fixing and tightening coupling of the wagon is normally carried out only after marshalling and shunting of the wagon and only then train under formation is completed; that it is not correct to say that shunting starts with Bariwalas and ends with Bariwalas; that hazards and risks faced by Pointsman and other Shuntman in shunting operation and in setting points are not same with the category of Bariwala. They have not to set any points or join or remove couplings of wagon when the shunting work is in progress; that their duty is not arduous as that of Pointsman and they also do not set the hooks and couplings in right position which work is done by Pointsman; that Bariwala simply held the Pointsman when called to hammer the hook only.

5. The Zonal Secretary of the Union has by Ex. 14 complained of victimisation of Bariwalas by reducing one Bariwala in each shift and penalising one Shri Radhey Shyam Bariwala for his late arrival on 1 Up Mail and due to that 1 Up Mail suffered detention for 5 minutes.

6. Shri Suvalal Nathuji, Shunting Jamadar has been examined on behalf of the Union. No oral evidence has been led on behalf of the Railway Administration.

7. I have heard Shri Satramdas, A.P.O., Western Railway, Rajkot and Shri B. K. Sharma, Secretary Pashchim Railway Karamchhari Parishad.

8. After going through the documentary and oral evidence and after hearing the arguments made on behalf of both the parties, I am of the view that the short point which requires to be determined is whether the Bariwalas can be said to be engaged in shunting operations. In addition to written statement Ex. 4, the Western Railway has filed the Ex. 15 contending that Bariwalas are not engaged in the course of their duties in the actual shunting operations and the shunting operation is performed by a shunting gang comprising of Pointsman who works for the purpose of uncoupling of wagons and for showing hand signals to the driver of the shunting engine and also for changing of uninterlocked points in the yard etc. These pointmen are engaged in the actual shunting operation during which the shunting engine moves to and fro and detachment of loads also takes place during the same operation. This work is considered hazardous and arduous and therefore, these staff are considered eligible for grant of note that here it is admitted fact that the Bariwalas are included in shunting gang of the yards but they do not participate in actual shunting operation and their basic job is confined to adjust the coupling by using "Baries", if required; that their function starts only after the shunting operation has been completed in so far as the wagons on which the work is completed. But this has been denied by Suvalal Nathuji Shunting Jamadar who has clearly stated in his cross-examination at Ex. 19 that if it is not hooked properly the services of Bariwalas are required. This clearly shows that without some important part played by Bariwalas the work of shunting operation cannot be called completed. That in about 25% wagons Bariwalas are required and the Bariwalas are required to go where their services are required. Shri Sharma for the Union has also argued that in shunting staff Shunting Jamadar, Pointsman and Bariwala are required. I am not convinced by the arguments made on behalf of the Railway that Bariwalas are not required in shunting operation and only in few cases that after the shunting operation is over the Bariwalas are required to tighten the hooks. It appears from the oral and documentary evidence on record that the Bariwalas are part and parcel of the Shunting Gang and their services are required in shunting operations and they also face the hazardous and the risk faced by the other staff who are given special pay of Rs. 10/- p.m. The Union has demanded the special pay w.e.f. 1-4-1980. But it appears from the reference that the reference was special pay of Rs. 10/- per month. It is pertinent to

made on 9-12-1983 and was received in this office on 15-12-1983. So it would meet the ends of justice if the special pay is granted w.e.f. 1-4-1984.

9. I, therefore, direct that Bariwalas be paid special pay of Rs. Rs. 10/- p.m. w.e.f. 1-4-1984 and the Union be paid Rs. 100/- as and by way of costs.

Ahmedabad.

G. S. BAROT, Presiding Officer.

[No. L-41016/16-V83-D. II(B)]

Date : 6-4-1989.

का. आ. 1261.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, गैरियन इंजीनियर प्रोजेक्ट के प्रबंधन से सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करनी है जो केन्द्रीय सरकार को 29-4-89 को प्राप्त हुआ था।

S.O. 1261.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Garrison Engineer, Project-V and their workmen, which was received by the Central Government on the 28-4-89.

ANNEXURE

BEFORE SHRI G. S. KALRA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 67/86

In the matter of dispute between Shri Prem Chand, C/o Shri H. K. Pathak, 1st Floor, Rear Entrance, Caxton House 2E Rani Jhansi Road, New Delhi.

Versus

Garrison Engineer, Project-V, Delhi Cantt., New Delhi.

APPEARANCES :

Shri H. K. Pathak for the workman.

Shri Ranbir Chand for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-14012/31/85-D.II (B) dated 28th August, 1986 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Garrison Engineer, Project-V in terminating the services of Shri Prem Chand Safai Karamchhari from 9-5-1983 is legal and justified ? If not, to what relief is he entitled to ?"

2. The case of the workman is that he joined service with the Management as a casual safai karamchari on 5-3-1982. His services were terminated on 9-5-1983 without any notice, charge sheet or enquiry. No wages in lieu of notice or retrenchment compensation was paid to him. Hence his termination was violative of the provision of the I. D. Act and he raised an industrial dispute and the matter went before the Assistant Labour Commissioner (Central) Delhi for conciliation. During the Conciliation proceedings the Management offered to take him back and he was reinstated but his services were again terminated on 13-3-1985. Then he sought the re-opening of the industrial dispute raised by him earlier and i.e. how this reference is before this Tribunal.

3. The Management in its written statement has simply denied the claim and allegations of the workman and have asserted that the order of termination is legal. It was, however, denied that the management agreed to take the petitioner on duty during conciliation.

4. At the outset it may be observed that the Management does not deny that the workman had completed one years continuous service during the 12 preceding months when his services were terminated

on 9-5-1983. It is also an admitted fact that no notice was given to the workman nor any wages in lieu of notice nor any retrenchment compensation was paid to him at the time of termination of his services. The status of the establishment of Garrison Engineer is similar to that of the CPWD and meets the triple test of "industry" as laid down by the Hon'ble Supreme Court in the Bangalore Water Supply case and hence the Management is an industry and, therefore, it is covered by the Industrial Disputes Act. The termination of the services of the workman amounts to retrenchment and the Management has clearly violated the provisions of section 25-F of the I. D. Act. Hence the termination of the services of the workman with effect from 9-5-83 is held to be illegal and void.

In view of the discussions made above the workman is directed to be reinstated with continuity of service and with full back wages. However, according to workman himself he remained employed from 19-9-84 to 13-3-1985. Hence no back wages need be paid to him for this period. This reference stands disposed of accordingly.

G. S. KALRA, Presiding Officer

[No. L-14012/31/85-D. II (B)]

HARI SINGH, Desk Officer.

27th April, 1989.

